

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/1. INSOLVENCY PROCEEDINGS; INTRODUCTION/1. Insolvency procedures.

COMPANY AND PARTNERSHIP INSOLVENCY (

1. INSOLVENCY PROCEEDINGS; INTRODUCTION

1. Insolvency procedures.

There are four types of procedure under the Insolvency Act 1986 which govern the administration of the affairs of insolvent companies:

- 1 (1) voluntary arrangements under Part I of the Act¹ which contains provisions which apply when a proposal is made for a composition in satisfaction of a company's debts or for a scheme of arrangement for its affairs;
- 2 (2) administration under Part II of the Act² which contains provisions under which administrators may be appointed with regard to a company in financial difficulties;
- 3 (3) receivership under Part III of the Act³ which deals primarily with administrative receivers who may be appointed by the holder of any debentures of the company secured by a floating charge; and
- 4 (4) winding up under Parts IV to VI of the Act⁴ which contain provisions relating to the winding up of companies by the court or voluntarily.

The persons appointed to administer the affairs of the company in any such proceedings, that is to say the nominee or supervisor of voluntary arrangements under Part I of the Act, administrators, administrative receivers, liquidators and provisional liquidators, must be qualified to act as insolvency practitioners in relation to the company or, in the case of the nominee or supervisor of a voluntary arrangement, authorised to act as nominee or supervisor⁵.

The Company Directors Disqualification Act 1986 makes provision for the disqualification of persons from being directors of companies, and from otherwise being concerned with a company's affairs⁶.

There is a separate statutory regime relating to financial markets and insolvency⁷.

1 Ie the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq post.

2 Ie ibid Pt II (s 8) (as amended): see para 145 et seq post.

3 Ie ibid Pt III Ch I (ss 28-49) (as amended) (see para 380 et seq post) and Pt III Ch III (s 72) (see COMPANIES vol 15 (2009) PARA 1358). Part III (ss 28-72) (as amended) applies also to European Economic Interest Groupings: see COMPANIES vol 15 (2009) PARAS 1631-1632.

4 Ie ibid Pts IV-VI (ss 73-246) (as amended): see para 432 et seq post.

5 See ibid s 1(2) (as amended) (see para 71 post), s 2(4) (as amended) (see para 114 post), s 4(2) (as amended) (see para 123 post), s 7(2) (as amended) (see para 132 post), s 8, Sch B1 para 6 (as added) (see para 213 post) and s 230(2)-(4) (as amended) (see para 9 post). The official receiver as liquidator or provisional liquidator is not required to be so qualified: s 230(5). As to insolvency practitioners and their qualification see Pt XIII (ss 388-398) (as amended); and para 8 et seq post.

6 See para 1107 et seq post.

7 See the Companies Act 1989 Pt VII (ss 154-191) (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 509 et seq.

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/1. INSOLVENCY PROCEEDINGS; INTRODUCTION/2. Application of the statutory provisions.

2. Application of the statutory provisions.

The statutory provisions relating to insolvency procedures¹ are for the most part contained in the Insolvency Act 1986² and the Company Directors Disqualification Act 1986³. The Insolvency Act 1986 and the Company Directors Disqualification Act 1986 both came into force on 29 December 1986⁴. The practice in insolvency proceedings, so far as not laid down by those Acts, is mainly regulated by rules made under those Acts⁵.

Certain provisions of the Insolvency Act 1986 relating to companies which are insolvent or in liquidation apply to more than one of the types of insolvency procedure⁶, although in certain instances their application may vary in detail according to the type of insolvency procedure. These provisions relate to:

- 5 (1) the requirement that the holders of office be qualified insolvency practitioners in relation to the company⁷;
- 6 (2) the appointment to office of two or more persons⁸;
- 7 (3) the validity of the office-holder's acts⁹;
- 8 (4) essential supplies by utilities¹⁰;
- 9 (5) the getting-in of the company's property¹¹;
- 10 (6) the duty of certain persons to co-operate with the office-holder¹²;
- 11 (7) the powers of inquiry into the company's dealings¹³;
- 12 (8) transactions at an undervalue and preferences¹⁴;
- 13 (9) extortionate credit transactions¹⁵;
- 14 (10) avoidance of certain floating charges¹⁶;
- 15 (11) unenforceability of liens on books and papers¹⁷;
- 16 (12) insolvency practitioners and their qualification¹⁸;
- 17 (13) Insolvency Service finance, accounting and investment¹⁹; and
- 18 (14) transactions defrauding creditors²⁰.

1 See para 1 ante.

2 See the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended); and para 71 et seq post. Parts VIII-XI (ss 252-385) (as amended) contain provisions relating to the insolvency of individuals: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY. See also Pts XII-XVIII (ss 386-436) (as amended), which contain provisions bearing on both company and individual insolvency; and para 8 et seq post.

Significant amendments were made to the Insolvency Act 1986 Pts I-VII (as amended) by the Insolvency Act 2000, in respect of voluntary arrangements under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq post) and by the Enterprise Act 2002, in respect of administrations under the Insolvency Act 1986 Pt II (ss 8-27) (as amended) (see para 145 et seq post).

The statutory provisions have also been amended to give effect to the European Regulation on Insolvency Proceedings (ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1)) (see para 46 et seq post).

3 See para 1107 et seq post.

4 Insolvency Act 1986 s 443; Company Directors Disqualification Act 1986 s 25; Insolvency Act 1985 (Commencement No 5) Order 1986, SI 1986/1924, art 3. The provisions relating to voluntary arrangements under the Insolvency Act 1986 Pt I (as amended) (see para 71 et seq post) and to administration orders under Pt II (as amended) (see para 145 et seq post) apply to all such proceedings commenced on or after 29 December 1986.

The Insolvency Act 1986 and the Company Directors Disqualification Act 1986 contain the following general transitional provisions and savings:

- 1 (1) so far as anything done or treated as done under or for the purposes of any provision of the former enactments could have been done under or for the purposes of the corresponding provision of the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, it is not invalidated by the repeal of that provision but has effect as if done under or for the purposes of the corresponding provision; and any order, regulation, rule or other instrument made or having effect under any provision of the former enactments is, in so far as its effect is preserved by these provisions, to be treated for all purposes as made and having effect under the corresponding provision (Insolvency Act 1986 Sch 11 para 23; Company Directors Disqualification Act 1986 Sch 3 para 2);
- 2 (2) where any period of time specified in a provision of the former enactments is current immediately before 29 December 1986, the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, has effect as if the corresponding provision had been in force when the period began to run; and, without prejudice to the above provisions, any period of time so specified and current is deemed for the purposes of the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be: (a) to run from the date or event from which it was running immediately before 29 December 1986; and (b) to expire, subject to any provision of the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, for its extension, whenever it would have expired if the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, had not been passed; and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as is mentioned above are to be under the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, as they were or would have been under the former enactments (Insolvency Act 1986 Sch 11 para 24; Company Directors Disqualification Act 1986 Sch 3 para 3);
- 3 (3) where, in any provision of the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, there is a reference to another such provision, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past, including in particular past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences, the reference to the other provision is to be read as including a reference to the corresponding provision of the former enactments (Insolvency Act 1986 Sch 11 para 25; Company Directors Disqualification Act 1986 Sch 3 para 4);
- 4 (4) offences committed before 29 December 1986 under any provision of the former enactments may be prosecuted and punished after that date, notwithstanding any repeal by the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, as if the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, had not been passed (Insolvency Act 1986 Sch 11 para 26(1); Company Directors Disqualification Act 1986 Sch 3 para 5);
- 5 (5) in the case of the Insolvency Act 1986 only, a contravention of any provision of the former enactments committed before 29 December 1986 may not be visited with any severer punishment under or by virtue of the Insolvency Act 1986 than would have been applicable under that provision at the time of the contravention; but, where an offence for the continuance of which a penalty was provided has been committed under any provision of the former enactments, proceedings may be taken under the Insolvency Act 1986 in respect of the continuance of the offence on and after 29 December 1986 in the like manner as if the offence has been committed under the corresponding provision of the Insolvency Act 1986 (Sch 11 para 26(2));
- 6 (6) a reference in any enactment, instrument or document, whether express or implied, and in whatever phraseology, to a provision of the former enactments, including the corresponding provision of any yet earlier enactment, is to be read, where necessary to retain for the enactment, instrument or document, the same force and effect as it would have had but for the passing of the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be, as, or as including, a reference to the corresponding provision by which it is replaced in the Insolvency Act 1986 or the Company Directors Disqualification Act 1986, as the case may be (Insolvency Act 1986 Sch 11 para 27(1); Company Directors Disqualification Act 1986 Sch 3 para 6);
- 7 (7) in the case of the Insolvency Act 1986 only, the generality of the provisions in head (6) supra is not affected by any specific conversion of references made by the Insolvency Act 1986 nor by the inclusion in any provision of that Act of a reference, whether express or implied, and in whatever phraseology, to the provision of the former enactments corresponding to that

provision, or to a provision of the former enactments which is replaced by a corresponding provision of that Act (Sch 11 para 27(2));

- 8 (8) in the case of the Insolvency Act 1986 only, nothing in the provisions contained in heads (1)-(7) supra is to be taken as prejudicing the Interpretation Act 1978 ss 16, 17 (savings from, and effect of, repeals: see STATUTES vol 44(1) (Reissue) paras 1303, 1306 et seq); and for the purposes of s 17(2) (construction of references to enactments repealed and replaced etc: see STATUTES vol 44(1) (Reissue) para 1303), so much of the Insolvency Act 1985 s 18 as is replaced by a provision of the Insolvency Act 1986 is deemed to have been repealed by the Insolvency Act 1986 and not by the Company Directors Disqualification Act 1986 (Insolvency Act 1986 Sch 11 para 29);
- 9 (9) in the case of the Company Directors Disqualification Act 1986 only, the provisions contained in heads (1)-(4), (6) supra relating to that Act are without prejudice to anything in the Interpretation Act 1978 with regard to the effect of repeals (Company Directors Disqualification Act 1986 s 23(1)).

For these purposes, references to 'the former enactments' are: (i) for the purposes of the Insolvency Act 1986, so much of the Companies Act 1985 as is repealed and replaced by the Insolvency Act 1986 (see s 439(1), Sch 13), the Insolvency Act 1985 (see s 235, Sch 10) and the other enactments repealed by the Insolvency Act 1986 (see s 438, Sch 12); and (ii) for the purposes of the Company Directors Disqualification Act 1986, so much of the Companies Act 1985 and so much of the Insolvency Act 1985 as are repealed and replaced by the Company Directors Disqualification Act 1986 (see s 23(2), Sch 4): Insolvency Act 1986 s 437, Sch 11 para 22; Company Directors Disqualification Act 1986 s 23(1), Sch 3 para 1).

5 See the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952; the Insolvency Practitioners (Recognised Professional Bodies) Order 1986, SI 1986/1764; the Insolvency Rules 1986, SI 1986/1925 (as amended); the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996 (as amended); the Insolvency (Amendment of Subordinate Legislation) Order 1986, SI 1986/2001 (as amended); the Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986, SI 1986/2123; the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 (as amended); the Insolvency (ECSC Levy Debts) Regulations 1987, SI 1987/2093; the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended); the Insolvency Act 1986 (Guernsey) Order 1989, SI 1989/2409; the Insolvency Practitioners Regulations 1990, SI 1990/439 (as amended); the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended); the Insolvency Regulations 1994, SI 1994/2507 (as amended); the Co-operation of Insolvency Courts (Designation of Relevant Countries) Order 1996, SI 1996/253; the Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909 (as amended); the Co-operation of Insolvency Courts (Designation of Relevant Country) Order 1998, SI 1998/2766; and the Companies (Disqualification Orders) Regulations, SI 2001/967 (as amended).

As to fees see the Insolvency Fees Order 1986, SI 1986/2030 (as amended); the Department of Trade and Industry (Fees) Order 1988, SI 1988/93 (as amended); and para 1106 post.

- 6 See para 1 ante.
- 7 See the Insolvency Act 1986 s 230 (as amended); and para 9 post.
- 8 See *ibid* s 231 (as amended); and paras 158, 391, 491, 562, 968 post.
- 9 See *ibid* s 232 (as amended); and paras 159, 393, 491, 564, 969 post.
- 10 See *ibid* s 233 (as amended); and paras 140, 165, 399, 491, 583, 962 post.
- 11 See *ibid* s 234 (as amended); and paras 167, 400, 491, 675, 962 post.
- 12 See *ibid* s 235 (as amended); and paras 167, 400, 514, 678, 962 post.
- 13 See *ibid* ss 236, 237; and paras 167, 400, 491, 515, 679, 681, 685, 686, 962 post.
- 14 See *ibid* ss 238-241 (as amended); and paras 168, 843 et seq post.
- 15 See *ibid* s 244 (as amended); and para 857 et seq post.
- 16 See *ibid* s 245 (as amended); and paras 168, 861 et seq post.
- 17 See *ibid* s 246 (as amended); and paras 168, 676 post.
- 18 See *ibid* Pt XIII (ss 388-398) (as amended); and para 8 et seq post.

19 See *ibid* ss 403-409 (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

20 See *ibid* ss 423-425 (as amended); and para 853 et seq post.

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

2 Application of the statutory provisions

NOTE 4--Company Directors Disqualification Act 1986 Sch 3 para 1; Insolvency Act 1986 s 437, Sch 11 amended: SI 2009/1941.

NOTE 5--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by amendments made by SI 2010/686. In particular, throughout SI 1986/1925, the word 'fit' is substituted by the word 'just', the word 'leave' is substituted by the word 'permission', and the word 'sign' (and paradigmatic expressions) is substituted by the word 'authenticate' (and equivalent paradigmatic expressions). References to affidavits are replaced by references to witness statements, statements of truth, statements of concurrence and certificates of service, as appropriate, and such statements are 'made' rather than 'sworn' ('witness statement', 'statement of truth' and 'certificate of service' are defined in r 13.13). Most shorter time limits are expressed in the number of business days, so that a reference to 'seven days' is now to 'five business days', and certain time limits of 21 days or over are reduced and other time limits are varied. Other terminological changes include references to a 'convener' of a meeting being substituted by a 'nominee', 'deponents' being substituted by 'nominated persons', an 'ex parte hearing' being substituted by a 'hearing without notice to any other party', 'exhibited' being substituted by 'attached', 'give' being substituted by 'send or give copies', 'inland revenue' being substituted by 'HM Revenue and Customs', 'insolvency practitioner' and 'responsible insolvency practitioner' being substituted by 'office-holder' (defined in new r 13.9A), 'plaintiff' being substituted by 'claimant', and 'a winding up' being substituted by 'winding-up proceedings' (definition added to r 13.13).

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3. Companies subject to insolvency proceedings.

In general¹, the companies² which are subject to insolvency proceedings under the Insolvency Act 1986³ are those formed and registered under the Companies Act 1985 or under the Joint Stock Companies Acts⁴, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929 or the Companies Acts 1948 to 1983⁵.

Subject to certain exceptions⁶, and to any provision expressly relating to companies incorporated elsewhere than in Great Britain, nothing in the Insolvency Act 1986 extends to Northern Ireland or applies to or in relation to companies registered or incorporated in Northern Ireland⁷.

1 The exceptions to this general principle are considered passim; but see in particular paras 8 et seq post (insolvency practitioners and their qualification), 71 et seq post (voluntary arrangements), 145 et seq post (administration), 380 et seq post (administrative receivers); and 432 et seq post (winding up).

Companies, wherever incorporated, but whose centre of main interests is located within England and Wales, may also be the subject of voluntary arrangements, administration or winding up under the Insolvency Act 1986: see the European Regulation on Insolvency Proceedings (ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1)); and para 46 et seq post.

2 For the general meaning of 'company' in the Companies Act 1985 s 735 (applied by the Insolvency Act 1986 s 251) see COMPANIES vol 14 (2009) PARAS 1, 24.

3 See para 1 ante.

4 For the meaning of 'the Joint Stock Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

5 Companies Act 1985 s 735(1), (3) (applied by the Insolvency Act 1986 s 251). Companies registered in the Republic of Ireland are not included: Companies Act 1985 ss 675, 679, 735 (applied by the Insolvency Act 1986 s 251). There is power to extend certain provisions of the Insolvency Act 1986 to any of the Channel Islands or any colony: see s 442; and para 1156 post.

6 The following provisions of the Insolvency Act 1986 relating to company insolvency extend to Northern Ireland: s 197 (see para 1081 post); s 426 (as amended) (see para 1029 post); s 428 (as amended) (see para 12 post); and s 439, Sch 14 (as amended) (amendments of enactments): s 441(1).

7 Ibid s 441(2). The Company Directors Disqualification Act 1986 does not extend to Northern Ireland: s 24(2).

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

3 Companies subject to insolvency proceedings

TEXT AND NOTES--As to provision for insolvency in relation to banks see the Banking Act 2009 Pt 2 (ss 90-135); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791B.

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4. Courts having jurisdiction.

For the purposes of the Insolvency Act 1986 and the Company Directors Disqualification Act 1986, 'the court', in relation to a company, means the court having jurisdiction to wind up the company¹.

¹ Companies Act 1985 s 744 (applied by the Insolvency Act 1986 s 251; and by the Company Directors Disqualification Act 1986 s 22(9)). As to the courts having jurisdiction to wind up a company see para 438 et seq post.

Powers conferred by the Insolvency Act 1986 and the Companies Act 1985 on the court are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums: Insolvency Act 1986 s 159.

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

4 Courts having jurisdiction

NOTE 1--1986 Act s 159 amended: Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194; Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, SI 2009/1941.

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5. Meaning of 'connected persons' and 'associates'.

For the purposes of the provisions relating to company insolvency in the Insolvency Act 1986¹, a person is connected with a company if he is a director² or shadow director³ of the company or an associate of such a director or shadow director, or if he is an associate of the company⁴.

For the purposes of the Insolvency Act 1986, any question whether a person is an associate of another person is to be determined in accordance with the following provisions⁵.

A person is an associate of an individual if that person is the individual's husband or wife, or is a relative⁶, or the husband or wife of a relative, of the individual or of the individual's husband or wife⁷.

A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm⁸.

A person is an associate of any person whom he employs or by whom he is employed⁹.

A person in his capacity as trustee of a trust other than a trust arising under the Insolvency Act 1986¹⁰, or a pension scheme or an employees' share scheme¹¹, is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person¹².

A company¹³ is an associate of another company if:

- 19 (1) the same person has control¹⁴ of both, or a person has control of one and persons who are his associates, or he and other persons who are his associates, have control of the other; or
- 20 (2) a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating, in one or more cases, a member of either group as replaced by a person of whom he is an associate¹⁵.

A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it¹⁶.

In the case of insolvency proceedings in relation to a limited liability partnership¹⁷, a member of a limited liability partnership is an associate of that partnership and of every other member of that partnership and of the husband or wife or relative of every other member of that partnership¹⁸.

1 le the provisions of the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended).

2 For these purposes, 'director' includes any person occupying the position of director, by whatever name called: *ibid* s 251.

3 For these purposes, 'shadow director', in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act; but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity: *ibid* s 251.

4 Ibid s 249. In the case of insolvency proceedings in relation to a limited liability partnership, it is provided that a person is connected with a company, including a limited liability partnership, for these purposes if he is a director or shadow director of a company or an associate of such a director or shadow director, including a member or a shadow member of a limited liability partnership or an associate of such a member or shadow member, or if he is an associate of the company or of the limited liability partnership: see s 249; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1309 post. 'Shadow member', in relation to a limited liability partnership, means a person in accordance with whose directions or instructions the members of the partnership are accustomed to act, but a person is not deemed a shadow member by reason only that the members of the partnership act on advice given by him in a professional capacity: Insolvency Act 1986 s 251; Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

5 Insolvency Act 1986 s 435(1). Any provision in s 435 that a person is an associate of another person is to be taken to mean that they are associates of each other: s 435(1).

6 For these purposes, a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and an illegitimate child as the legitimate child of his mother and reputed father; and references in ibid s 435 to a husband or wife include a former husband or wife and a reputed husband or wife: s 435(8).

7 Ibid s 435(2).

8 Ibid s 435(3).

9 Ibid s 435(4). For these purposes, any director or other officer of a company is to be treated as employed by that company: s 435(9).

10 Ie under ibid Pts VIII-XI (ss 252-385) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

11 Ie within the meaning of the Companies Act 1985 s 743: see COMPANIES vol 14 (2009) PARA 169; INCOME TAXATION.

12 Insolvency Act 1986 s 435(5). See also *Re Thirty-Eight Building Ltd* [1999] 1 BCLC 416, *Re Thirty-Eight Building Ltd (in liquidation) (No 2)*, *Simms v Saunders* [2000] 1 BCLC 201 (trustees of a company pension scheme in their capacity as such were not persons connected with the company even though as individuals they were so connected).

13 For these purposes, 'company' includes any body corporate, whether incorporated in Great Britain or elsewhere; and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications: Insolvency Act 1986 s 435(11). 'Body corporate' does not include a corporation sole but includes a company incorporated elsewhere than in Great Britain; it does not include a Scottish firm: Companies Act 1985 s 740 (applied by the Insolvency Act 1986 s 251).

14 For these purposes, a person is to be taken as having control of a company if: (1) the directors of the company or of another company which has control of it, or any of them, are accustomed to act in accordance with his directions or instructions; or (2) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it; and, where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the company: Insolvency Act 1986 s 435(10).

15 Ibid s 435(6).

16 Ibid s 435(7).

17 For the meaning of 'limited liability partnership' see para 71 note 3 post.

18 Insolvency Act 1986 s 435(3A) (added for these purposes by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3).

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

5 Meaning of 'connected persons' and 'associates'

NOTE 4--SI 2001/1090 Sch 3 amended: SI 2005/2114.

TEXT AND NOTES 6-8--1986 Act s 435(2) substituted, s 435(3), (8) amended: Civil Partnership Act 2004 Sch 27 para 122.

NOTES 10-12--Insolvency Act 1986 s 435(5) amended: SI 2009/1941.

NOTE 14--See *Unidare plc v Cohen; Re Kilnoore Ltd (in liquidation)* [2005] EWHC 1410 (Ch), [2006] Ch 489 (company held majority of other company's shares; shareholder company made binding undertaking not to exercise voting power without third company's consent and declaration that the shares were held on trust for third company; third company and not the shareholder company had control).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/1. INSOLVENCY PROCEEDINGS; INTRODUCTION/6. Crown application.

6. Crown application.

The provisions of the Insolvency Act 1986 relating to company insolvency¹ which derive from the Insolvency Act 1985² bind the Crown so far as affecting or relating to the following matters:

- 21 (1) remedies against, or against the property of, companies or individuals³;
- 22 (2) priorities of debts⁴;
- 23 (3) transactions at an undervalue or preferences⁵;
- 24 (4) voluntary arrangements⁶ approved under Part I of the Insolvency Act 1986⁷.

1 As to these provisions see para 2 note 2 ante.

2 Ie the Insolvency Act 1985 (repealed save for certain amending provisions): see the Insolvency Act 1986 s 438, Sch 12; and the Company Directors Disqualification Act 1986 s 23(2), Sch 4.

3 Orders made under the Insolvency Act 1986 s 236 (inquiry into company's dealings etc: see para 679 post) bind the Crown: *Soden v Burns, R v Secretary of State for Trade and Industry, ex p Soden* [1996] 3 All ER 967, [1996] 1 WLR 1512.

4 See para 761 et seq post.

5 See para 843 et seq post.

6 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq post.

7 Ibid s 434(a)-(d). Section 434 applies to the Company Directors Disqualification Act 1986 ss 6-10 (as amended), 15, 19(c), 20, Sch 1 (as amended) (see para 1107 et seq post) as it does to the provisions of the Insolvency Act 1986 mentioned in s 434: Company Directors Disqualification Act 1986 s 21(3). As to the application to the Crown of the provisions of the Insolvency Act 1986 relating to individual insolvency see s 434; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 3.

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/1. INSOLVENCY PROCEEDINGS; INTRODUCTION/7. Insolvency proceedings involving participants in payment and securities settlement systems.

7. Insolvency proceedings involving participants in payment and securities settlement systems.

Regulations have been made¹ implementing the European Directive on settlement finality in payment and securities settlement systems². The protection afforded by the regulations applies to systems which have been designated by means of a designation order made by the Bank of England or the Financial Services Authority³.

Modifications are made to the law of insolvency in so far as it applies to transfer orders effected through a designated system and to collateral security provided in connection with participation in a designated system⁴. In particular, provision is made to the effect that proceedings of a designated system take precedence over general insolvency proceedings⁵. The modifications to the law of insolvency cease to apply to a transfer order which is entered into a designated system after insolvency, unless the transfer order is carried out on the same day as the insolvency and the relevant persons do not have notice of the insolvency at the time of settlement⁶. Certain provisions of the Companies Act 1989⁷ are disapplied in the case of a market contract which is also a transfer order effected through a designated system, and a market charge which is also a collateral security charge⁸.

Where a court makes an insolvency order against a participant in a designated system, it must notify both the relevant designated system and the relevant designating authority that such an order has been made⁹.

The law governing the rights of a person as a holder of collateral security when his entitlement is recorded in a register, account or centralised deposit system is specified as the law of the EEA state (or part of the EEA state) where the register, account or centralised deposit system is located¹⁰. Any other rights or obligations arising from, or in connection with, participation in a system designated under the Directive are to be governed by the law governing the system¹¹. Further provision is made in relation to insolvency proceedings in other jurisdictions¹², and systems designated in other EEA states, Northern Ireland or Gibraltar¹³.

1 See the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979 (amended by SI 2000/2952; SI 2001/3929; SI 2002/765; SI 2002/1555; SI 2003/2096).

2 I.e. EC Council and Parliament Directive 98/26 (OJ L166, 19.5.98, p 45) on settlement finality in payment and securities settlement systems.

3 As to applications for designation see the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 3. As to the grant or refusal of designation orders see reg 4. Certain requirements must be met for designation to be granted: see reg 4(1), Schedule. Certain of those requirements are deemed to have been met by recognised investment exchanges or recognised clearing houses: see reg 6 (amended by SI 2002/1555). As to revocation of designation see the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 7 (amended by SI 2002/1555). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

Fees may be charged both on application for a designation order, and for the continued designation of a designated system: see the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 5. See also reg 8 (certain undertakings to be treated as institutions), reg 9 (indirect participants in a system treated as participants), reg 10 (amended by SI 2002/1555) (provision of information by designated systems), the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 11 (exemption of designating authority and employees thereof from liability in damages), and reg 12 (publication of information and advice by designating authority).

- 4 See *ibid* regs 13-19 (amended by SI 2003/2096).
- 5 See the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 14 (amended by SI 2003/2096).
- 6 See the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 20.
- 7 See the Companies Act 1989 ss 163(4)-(6), 164(4)-(6), 175(5), (6) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 517, 518, 529).
- 8 Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 21.
- 9 See *ibid* reg 22.
- 10 See *ibid* reg 23.
- 11 See *ibid* reg 24.
- 12 See *ibid* reg 25 (amended by SI 2001/3929).
- 13 See the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 26.

UPDATE

1-7 Insolvency Proceedings; Introduction

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

7 Insolvency proceedings involving participants in payment and securities settlement systems

NOTE 1--SI 1999/2979 further amended: SI 2006/50, SI 2006/3221, SI 2007/108, SI 2007/832, SI 2007/1655, SI 2009/1972.

NOTE 2--Directive 98/26 amended: European Parliament and EC Council Directive 2009/44 (OJ L146, 10.6.2009, p 37).

NOTE 4--SI 1999/2979 regs 13-17, 19 further amended: SI 2006/50. SI 1999/2979 regs 14-16 further amended: SI 2009/1972. SI 1999/2979 reg 19 further amended: SI 2007/832, SI 2009/1972.

NOTE 5--SI 1999/2979 reg 14 further amended: SI 2006/50, SI 2007/832, SI 2009/1972.

NOTE 8--SI 1999/2979 reg 21 further amended: SI 2006/50.

NOTE 11--SI 1999/2979 reg 24 amended: SI 2006/50.

NOTE 12--SI 1999/2979 reg 25 further amended: SI 2006/50, SI 2007/1655.

NOTE 13--SI 1999/2979 reg 26 further amended: SI 2006/50.

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2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

(1) RESTRICTIONS ON UNQUALIFIED PERSON ACTING AS AN INSOLVENCY PRACTITIONER

8. Meaning of 'act as an insolvency practitioner'.

A person acts as an insolvency practitioner in relation to a company¹ by acting as its liquidator, provisional liquidator, administrator or administrative receiver², or as nominee³ or supervisor of a voluntary arrangement⁴. This does not apply to anything done by the official receiver⁵.

¹ For these purposes, 'company' means a company within the meaning given by the Companies Act 1985 s 735(1) (see COMPANIES vol 14 (2009) PARAS 1, 24) or a company which may be wound up under the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (winding up of unregistered companies: see para 1147 et seq post): s 388(4).

² For these purposes, 'administrative receiver' has the meaning given by *ibid* s 251 (see COMPANIES vol 15 (2009) PARA 1337): s 388(4).

³ A person acts as nominee in relation to a voluntary arrangement proposed under *ibid* Pt I (ss 1-7B) (as amended) (see para 71 et seq post) or Pt VIII (ss 252-263G) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 81) if he performs any of the functions conferred on nominees under the Part in question: s 388(2B) (added by the Insolvency Act 2000 s 4(1), (2)(c)).

Where a proposal for a voluntary arrangement is made: (1) by the directors of a company and before 1 January 2003 the intended nominee had endorsed a copy of the written notice of the proposal under the Insolvency Rules 1986, SI 1986/1925, r 1.4(3) (see para 110 post); or (2) by a liquidator or administrator acting as the nominee and before 1 January 2003 the liquidator or administrator had sent out a notice summoning the meetings under the Insolvency Act 1986 s 3 as required by the Insolvency Rules 1986, SI 1986/1925, r 1.11 (see para 117 post); or (3) by a liquidator or administrator not acting as the nominee and before 1 January 2003 the intended nominee had endorsed a copy of the written notice of the proposal under r 1.12(2) (see para 118 post), then such nominee will not act as an insolvency practitioner in relation to the company: see the Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 3, 5(a).

⁴ See the Insolvency Act 1986 s 388(1) (amended by the Insolvency Act 2000 s 4(1), (2)(a)). For these purposes, 'voluntary arrangement' means a voluntary arrangement approved by the company under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq post): s 388(1) (as so amended).

For the meaning of 'act as an insolvency practitioner' in relation to an insolvent partnership see s 388(2A) (as added and amended); and para 1295 post. For the meaning of 'act as an insolvency practitioner' in relation to an individual see s 388(2), (3) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 43.

⁵ *Ibid* s 388(5)(a) (substituted by the Bankruptcy (Scotland) Act 1993 s 11(1)). As to the official receiver see para 503 et seq post.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

8 Meaning of 'act as an insolvency practitioner'

NOTE 1--'Company' means a company registered under the Companies Act 2006 in England, Wales or Scotland, or a company that may be wound up under the Insolvency Act 1986 Pt V: Insolvency Act 1986 s 388(4) (definition substituted by SI 2009/1941).

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9. Holders of office to be qualified insolvency practitioners.

Where an administration order is made in relation to a company, the administrator must be a person who is qualified to act as an insolvency practitioner in relation to the company¹.

Where an administrative receiver of a company is appointed, he must be a person who is so qualified².

Where a company goes into liquidation³, the liquidator must be a person who is so qualified⁴; and, where a provisional liquidator is appointed, he must also be a person who is so qualified⁵.

Under a proposal for a voluntary arrangement, the nominee must be a person who is qualified to act as an insolvency practitioner or authorised to act as nominee in relation to the voluntary arrangement⁶; and, where the voluntary arrangement is approved, the supervisor must be a person who is so qualified or authorised to act as supervisor in relation to the voluntary arrangement⁷.

1 See the Insolvency Act 1986 s 8, Sch B1 para 6 (added by the Enterprise Act 2002 s 248(2), Sch 16). Where a petition for an administration order was presented before 15 September 2003 the administrator must be a person qualified to act as an insolvency practitioner in relation to the company: Insolvency Act 1986 s 230(1) (as originally enacted: see para 145 note 10 post). As to the appointment of administrators see para 158 post.

2 Ibid s 230(2).

3 For these purposes, a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution: ibid s 247(2). For the meaning of 'court' see para 4 ante. A limited liability partnership goes into liquidation if it makes a determination that it be wound up voluntarily or an order for its winding up is made by the court at a time when it has not already gone into liquidation by making such a determination: s 247(2); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3. See para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 post.

4 Ibid s 230(3). See further paras 556, 950 post. The provisions of s 230(3) and s 230(4) (see the text and note 5 infra) are without prejudice to any enactment under which the official receiver is to be, or may be, liquidator or provisional liquidator: s 230(5).

5 Ibid s 230(4). See further para 491 post. See also note 4 supra.

6 Ibid ss 1(2), 2(4), 4(2) (ss 1(2), 4(2) amended, and s 2(4) substituted, by the Insolvency Act 2000 s 2, Sch 2 Pt I paras 1-4). See also para 71 post.

Where a proposal for a voluntary arrangement is made: (1) by the directors of a company and before 1 January 2003 the intended nominee had endorsed a copy of the written notice of the proposal under the Insolvency Rules 1986 r 1.4(3) (see para 118 post); or (2) by a liquidator or administrator acting as the nominee and before 1 January 2003 the liquidator or administrator had sent out a notice summoning the meetings under the Insolvency Act 1986 s 3 as required by the Insolvency Rules 1986, SI 1986/1925, r 1.11 (see para 117 post); or (3) by a liquidator or administrator not acting as the nominee and before 1 January 2003 the intended nominee had endorsed a copy of the written notice of the proposal under r 1.12(2) (see para 118 post), then the nominee must be a person who is qualified to act as insolvency practitioner in relation to the company: see the Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3.

7 Insolvency Act 1986 s 7(2), (5) (amended by the Insolvency Act 2000 s 2, Sch 2 Pt I paras 1, 9). See also para 132 post.

Where a proposal for a voluntary arrangement is made: (1) by the directors of a company and before 1 January 2003 the intended nominee had endorsed a copy of the written notice of the proposal under the Insolvency Rules 1986, SI 1986/1925, r 1.4(3) (see para 118 post); or (2) by a liquidator or administrator acting as the nominee and before 1st January 2003 the liquidator or administrator had sent out a notice summoning the meetings under the Insolvency Act 1986 s 3 as required by the Insolvency Rules 1986, SI 1986/1925, r 1.11 (see para 117 post); or (3) by a liquidator or administrator not acting as the nominee and before 1 January 2003 the intended nominee had endorsed a copy of the written notice of the proposal under r 1.12(2) (see para 118 post), then the supervisor must be a person who is qualified to act as insolvency practitioner in relation to the company: see the Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(1) RESTRICTIONS ON UNQUALIFIED PERSON ACTING AS AN INSOLVENCY PRACTITIONER/10. Offence of acting as an insolvency practitioner without qualification.

10. Offence of acting as an insolvency practitioner without qualification.

A person who acts as an insolvency practitioner in relation to a company at a time when he is not qualified to do so is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both¹.

This does not, however, apply to the official receiver².

¹ Insolvency Act 1986 ss 389(1), 430, Sch 10. The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140.

Certain offences under the Insolvency Act 1986 are also punishable by means of a daily default fine: see s 430, Sch 10 (as amended).

² Insolvency Act 1986 s 389(2) (amended by the Bankruptcy (Scotland) Act 1993 s 11(2)). As to the official receiver see para 503 et seq post.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(1) RESTRICTIONS ON UNQUALIFIED PERSON ACTING AS AN INSOLVENCY PRACTITIONER/11. Authorisation of nominees and supervisors.

11. Authorisation of nominees and supervisors.

The offence of acting as an insolvency practitioner without qualification¹ does not apply to a person acting, in relation to a voluntary arrangement duly proposed or approved², as nominee³ or supervisor⁴ if he is authorised so to act⁵.

An individual, not being a person who:

- 25 (1) has been adjudged bankrupt⁶ or of whose estate sequestration has been awarded and, in either case, has not been discharged⁷;
- 26 (2) is subject to a disqualification order or a disqualification undertaking⁸; or
- 27 (3) is a mental health patient⁹,

is authorised to act as nominee or supervisor in relation to such an arrangement if:

- 28 (a) he is a member of a body corporate recognised for the purpose by the Secretary of State¹⁰; and
- 29 (b) there is in force security, or, in Scotland, caution, for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement¹¹.

1 Ie under the Insolvency Act 1986 s 389 (as amended): see para 10 ante.

2 Ie under ibid Pt I (ss 1-7B) (as amended): see para 71 et seq post.

3 For the meaning of 'nominee' see para 71 post.

4 As to the supervisor where there is a moratorium see para 105 et seq ante; and as to the supervisor otherwise see para 132 et seq ante.

5 See the Insolvency Act 1986 s 389A(1) (s 389A added by the Insolvency Act 2000 s 4(1), (4)).

6 As to the making of bankruptcy orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 195 et seq.

7 As to discharge from bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 629 et seq.

8 Ie under the Company Directors Disqualification Act 1986: see para 1107 et seq post.

9 Ie a patient within the meaning of the Mental Health Act 1983 Pt VII (ss 93-113) (as amended): (see MENTAL HEALTH) or the Mental Health (Scotland) Act s 125(1).

10 The Secretary of State may by order declare a body which appears to him to fall within the Insolvency Act 1986 s 389A(5) (as added) to be a recognised body for these purposes: s 389A(4) (as added: see note 5 supra). An order so made in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within the Insolvency Act 1986 s 389A(5) (as added): s 389A(7) (as so added). An order of the Secretary of State under the Insolvency Act 1986 s 389A (as added) has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect: s 389A(8) (as so added). A body may be so recognised if it maintains and enforces rules for securing that its members: (1) are fit and proper persons to act as nominees or supervisors; and (2) meet acceptable requirements as to education and practical training and experience: s 389A(5) (as so added). For

these purposes, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor, whether or not he is in fact a member of the body: s 389A(6) (as so added). As to the recognition of professional bodies generally see para 14 post.

In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 355. For the purposes of the legislation relating to insolvency, the powers of the Secretary of State are exercised in practice by the Secretary of State for Trade and Industry: see the Secretary of State for Trade and Industry (New Departments) Order 1974, SI 1974/692 (lapsed); the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127; and TRADE AND INDUSTRY vol 97 (2010) PARA 802 et seq. Matters relating to trade were originally within the general jurisdiction of the Board of Trade which no longer meets (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802). Its effective head, the President of the Board of Trade, now exercises functions concurrently with the Secretary of State for Trade and Industry who, since 1992, has used both titles so that any reference to the Board of Trade now has effect as if it were, or included, a reference to the Secretary of State: see the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, arts 2(1), 7(4); and TRADE AND INDUSTRY vol 97 (2010) PARA 802 et seq.

11 See the Insolvency Act 1986 s 389A(2), (3) (as added: see note 5 supra).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

11 Authorisation of nominees and supervisors

NOTE 11--Insolvency Act 1986 s 389A(2) amended: SI 2009/3081. Insolvency Act 1986 s 389A(3) amended: Mental Capacity Act 2005 Sch 6 para 31(2), Sch 7; SI 2009/1941.

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12. Competition and abuse of a dominant position.

Agreements between undertakings, decisions by associations of undertakings or concerted practices¹ which may affect trade within the United Kingdom² and have as their object or effect the prevention, restriction or distortion of competition are prohibited and void³. The prohibition does not, however, apply to any agreement to the extent that it constitutes a designated professional rule, imposes obligations arising from designated rules or constitutes an agreement to act in accordance with such rules⁴. For these purposes, a designated professional rule is a rule designated by the Secretary of State following notification of any rule to him by any body regulating a professional service⁵ or the persons who provide, or wish to provide, that service⁶. Insolvency services⁷ are such a professional service⁸.

Conduct on the part of one or more undertakings which amounts to the abuse of a dominant position⁹ in a market and which may affect trade within the United Kingdom is prohibited¹⁰.

Agreements and conduct are not prohibited to the extent that they are made or engaged in order to comply with a legal requirement¹¹.

1 As to the meanings of 'agreement', 'decision' and 'practice' see the Competition Act 1998 s 2(2); and COMPETITION vol 18 (2009) PARA 116.

2 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 3.

3 See the Competition Act 1998 s 2(1), (4).

4 See *ibid* Competition Act 1998 s 3(1)(d), Sch 4 para 1(1) (applying without amendments made by the Enterprise Act 2002 (see s 276, Sch 24 para 20)); and COMPETITION vol 18 (2009) PARA 119.

5 For the meaning of 'professional service' see the Competition Act 1998 Sch 4 para 1(2), Sch 4 Pt II (applying without amendments made by the Enterprise Act 2002); and COMPETITION vol 18 (2009) PARA 119. As to the Secretary of State see para 11 note 10 *ante*.

6 See the Competition Act 1998 Sch 4 paras 1(2), 2, 3 (applying without relevant amendments made by the Enterprise Act 2002); and COMPETITION vol 18 (2009) PARA 119.

7 For these purposes, 'insolvency services' means the services of persons acting as insolvency practitioners: Insolvency Act 1986 s 428(3) (amended by the Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000, SI 2000/311, art 19).

8 See the Competition Act 1998 Sch 4 para 19 (applying without amendments made by the Enterprise Act 2002 (see Sch 24 para 20)); and COMPETITION vol 18 (2009) PARA 119.

9 For the meaning of 'dominant position' see the Competition Act 1998 s 18(3); and COMPETITION vol 18 (2009) PARA 125.

10 See *ibid* s 18(1); and COMPETITION vol 18 (2009) PARA 125.

11 See *ibid* ss 3(1)(c), 19(1)(b), Sch 3 para 5; and COMPETITION vol 18 (2009) PARAS 120, 124.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS

13. Requisite qualification.

A person who is not an individual is not qualified to act as an insolvency practitioner¹; nor is a person qualified to act as an insolvency practitioner at any time² unless at that time:

- 30 (1) he is authorised so to act by virtue of membership of a recognised professional body³, being permitted so to act by or under the rules of that body⁴; or
- 31 (2) he holds an authorisation granted⁵ by a competent authority⁶.

A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless there is in force at that time security or, in Scotland, caution for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person⁷.

A person is not qualified to act as an insolvency practitioner at any time if at that time:

- 32 (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and, in either case, he has not been discharged⁸;
- 33 (b) he is subject to a disqualification order or a disqualification undertaking⁹; or
- 34 (c) he is a patient within the meaning of the Mental Health Act 1983¹⁰ or the Mental Health (Scotland) Act 1984 or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000¹¹.

A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order is in force in respect of him¹².

1 Insolvency Act 1986 s 390(1). For the meaning of 'act as an insolvency practitioner' see para 8 ante.

2 Where an individual began to act as an insolvency practitioner in relation to any person before 29 December 1986 (see para 2 ante), nothing in *ibid* s 390(2) or s 390(3) (see the text and notes 3-7 *infra*) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person: s 437, Sch 11 Pt IV para 21. 'Person' includes a body of persons corporate or unincorporate: Interpretation Act 1978 ss 5, 22(1), 23(1), Sch 1, Sch 2 para 4(1)(a).

3 Ie a professional body recognised under the Insolvency Act 1986 s 391: see para 14 post. For the meaning of 'membership of a professional body' see para 14 note 3 post.

4 *Ibid* s 390(2)(a).

5 Ie under *ibid* s 393: see para 16 post.

6 *Ibid* s 390(2)(b). For the meaning of 'competent authority' see para 15 post.

7 *Ibid* s 390(3). See also note 2 *supra*. As to the prescribed requirements in relation to security or caution see para 20 post.

8 As to the making of bankruptcy orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 195 et seq; and as to discharge from bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 629 et seq.

9 le under the Company Directors Disqualification Act 1986: see para 1107 et seq post.

10 See the Mental Health Act 1983 Pt VII (ss 93-113) (as amended); and MENTAL HEALTH.

11 Insolvency Act 1986 s 390(4) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt II para 16(1), (2)(b); and the Adults with Incapacity (Scotland) Act 2000 s 88(2), Sch 5 para 18). As to the appointment of guardians under the Mental Health (Scotland) Act 1984 see s 125(1).

12 Insolvency Act 1986 s 390(5) (added by the Enterprise Act 2002 s 257(3), Sch 21 para 4).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

13 Requisite qualification

TEXT AND NOTES 1-6--Also head (3) he holds an authorisation granted by the Department of Enterprise, Trade and Investment for Northern Ireland under the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, art 352: Insolvency Act 1986 s 390(2)(c) (added by SI 2009/3081).

TEXT AND NOTES 11, 12--Insolvency Act 1986 s 390(4) further amended, s 390(5) amended: Mental Capacity Act 2005 Sch 6 para 31(3), Sch 7; Tribunals, Courts and Enforcement Act 2007 Sch 20 para 6; SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/14. Recognised professional bodies.

14. Recognised professional bodies.

The Secretary of State may by order declare a body which appears to him to fulfil the statutory requirements¹ to be a recognised professional body for these purposes². A body may be so recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members³ as are permitted by or under the rules to act as insolvency practitioners⁴ are fit and proper persons so to act and meet acceptable requirements as to education and practical training and experience⁵.

An order so made in relation to a professional body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within these requirements⁶.

An order of the Secretary of State under these provisions has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect⁷.

The Secretary of State may by order require a body to pay a fee in connection with the grant or maintenance of recognition under these provisions⁸ and may refuse recognition, or by further order revoke an order of recognition⁹, where a fee is not paid¹⁰.

1 Ie the requirements of the Insolvency Act 1986 s 391(2): see the text and notes 3-5 infra. As to the Secretary of State see para 11 note 10 ante.

2 Ibid s 391(1). The bodies declared to be recognised professional bodies for the purposes of s 391 with effect from and including 10 November 1986 are: The Chartered Association of Certified Accountants; the Insolvency Practitioners Association; the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants in Ireland; the Institute of Chartered Accountants of Scotland; the Law Society; and the Law Society of Scotland: Insolvency Practitioners (Recognised Professional Bodies) Order 1986, SI 1986/1764, art 2, Schedule (made under the Insolvency Act 1985 ss 3(2), 10 (repealed) and having effect as if made under the Insolvency Act 1986 s 391(1), (4) by virtue of s 437, Sch 11 para 23 (see para 2 note 4 head (a) ante); and the Interpretation Act 1978 s 17(2)(b)); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 10, Sch 6.

3 For these purposes, references to members of a recognised professional body are references to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question; and the reference in the Insolvency Act 1986 s 390(2) (see para 13 ante) to membership of a professional body recognised under s 391 is to be read accordingly: s 391(3).

4 For the meaning of 'act as an insolvency practitioner' see para 8 ante.

5 Insolvency Act 1986 s 391(2).

6 Ibid s 391(4).

7 Ibid s 391(5).

8 Ibid s 415A(1)(a) (s 415A added by the Enterprise Act 2002 s 270(1)). See the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003, SI 2003/3363, art 2. As to the making of orders under the Insolvency Act 1986 s 415A (as added) see s 414(3), (5)-(7), (9) (applied by virtue of s 415A(4) (as so added)); and para 1106 post.

9 Ie under ibid s 391(1) (see the text and notes 1-2 supra).

10 Ibid s 415A(1)(b) (as added: see note 8 supra).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

14 Recognised professional bodies

NOTE 2--SI 2001/1090 Sch 6 amended: SI 2007/2073, 2009/1804.

TEXT AND NOTES 8-10--See 1986 Act s 415A(A1) (added by the Tribunals, Courts and Enforcement Act 2007 Sch 20 para 9).

NOTE 8--SI 2003/3363 art 2 amended: SI 2009/487, SI 2009/1804.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/15. Authorisation by competent authority.

15. Authorisation by competent authority.

Application may be made to a competent authority for authorisation to act as an insolvency practitioner¹; and the competent authorities for this purpose are:

- 35 (1) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description; and
- 36 (2) in relation to any other case, the Secretary of State².

The application must:

- 37 (a) be made in such manner as the competent authority may direct;
- 38 (b) contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application³; and
- 39 (c) be accompanied by the prescribed fee⁴,

and the authority may direct that notice of the making of the application must be published in such manner as may be specified in the direction⁵. At any time after receiving the application and before determining it, the authority may require the applicant to furnish additional information⁶. Directions and requirements given or imposed under these provisions⁷ may differ as between different applications⁸; and any information to be furnished to the competent authority must, if it so requires, be in such form or verified in such manner as it may specify⁹.

An application may be withdrawn before it is granted or refused¹⁰.

1 Insolvency Act 1986 s 392(1). For the meaning of 'act as an insolvency practitioner' see para 8 ante.

2 Ibid s 392(2). As to the Secretary of State see para 11 note 10 ante.

3 As to the grounds for granting or refusing authorisation see para 16 post.

4 The prescribed fee is £2,000: Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003, SI 2003/3363, art 3(3); and see also art 4. For these purposes, 'relevant time', in relation to an individual making an application or his application, means the time of making the application: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3). Any sums received under the Insolvency Act 1986 s 392 (as amended) by a competent authority other than the Secretary of State may be retained by the authority; and any sums so received by the Secretary of State must be paid into the Consolidated Fund: s 392(8). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq.

5 Ibid s 392(3). In the case of an application made to the Secretary of State there is no requirement for the application to be accompanied by the prescribed fee but this is without prejudice to the Insolvency Act 1986 s 415A (as added) (see para 14 ante): s 392(9) (added by the Enterprise Act 2002 s 270(3)).

6 Insolvency Act 1986 s 392(4).

7 Ie under ibid s 392(3) or (4): see the text and notes 3-6 supra.

8 Ibid s 392(5).

9 Ibid s 392(6).

10 Ibid s 392(7).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

15 Authorisation by competent authority

NOTE 4--The prescribed fee is now £850 in connection with the grant of the application: SI 2003/3363 art 3(3) (amended by SI 2009/3081). Where the application is granted, the individual to whom authorisation has been granted must pay to the Secretary of State as soon as reasonably practicable a fee of £2,400 in connection with the maintenance of the authorisation for the period of 12 months commencing with the date of the grant of the authorisation: SI 2003/3363 art 3(3A) (added by SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/16. Grant and refusal of authorisation.

16. Grant and refusal of authorisation.

The competent authority¹ may, on an application duly made and after being furnished with all such information as it may so require, grant or refuse the application². The authority must, however, grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have:

- 40 (1) that the applicant is a fit and proper person to act as an insolvency practitioner³; and
- 41 (2) that the applicant meets the prescribed requirements with respect to education and practical training and experience⁴.

An authorisation granted under these provisions, if not previously withdrawn⁵, continues in force for such period not exceeding the prescribed maximum⁶ as may be specified in the authorisation⁷.

The Secretary of State may by order require a person to pay a fee in connection with the grant or maintenance of authorisation under these provisions⁸ and may disregard and application or withdraw an authorisation where a fee is not paid⁹.

1 For the meaning of 'competent authority' see para 15 ante.

2 Insolvency Act 1986 s 393(1). As to the making of applications see s 392 (as amended); and 15 ante.

3 As to the matters to be taken into account for determining whether an applicant is fit and proper to act as an insolvency practitioner see para 17 post. For the meaning of 'act as an insolvency practitioner' see para 8 ante.

4 Insolvency Act 1986 s 393(2). As to the prescribed requirements with respect to education, practical training and experience see paras 18-19 post.

Applications made by an individual to the competent authority on or after 29 December 1986 (see para 2 ante) for authorisation under s 393 to act as an insolvency practitioner and any withdrawal of an authorisation granted by a competent authority or the relevant authority under the Insolvency Act 1985 s 5 (repealed) pursuant to a notice under the Insolvency Act 1986 s 394(2) (see para 24 post) on or after 29 December 1986 were governed by the Insolvency Practitioners Regulations 1986, SI 1986/1995, Pt II (regs 2-8) (revoked): reg 3 (revoked). The Insolvency Practitioners (Authorisation by Relevant Authorities) Regulations 1986, SI 1986/951, were revoked, save that they continued to apply and have effect in relation to any application made to a relevant authority before 29 December 1986 for authorisation under the Insolvency Act 1985 s 5 (repealed) to act as an insolvency practitioner in respect of which: (1) no authorisation had been granted; or (2) no written notice under s 8(4) had been given by the relevant authority; or (3) no written notice under s 9 had been given by the authority, before 29 December 1986: Insolvency Practitioners Regulations 1986, SI 1986/1995, reg 2 (revoked).

Applications made to a competent authority on or after 1 April 1990 for authorisation to act as an insolvency practitioner and any withdrawal of an authorisation pursuant to a notice under the Insolvency Act 1986 s 394(2) (see para 24 post) given on or after that date are governed by the Insolvency Practitioners Regulations 1990, SI 1990/439 (as amended): reg 3. Notwithstanding the revocation of the Insolvency Practitioners Regulations 1986, SI 1986/1995 by the Insolvency Practitioners Regulations 1990, SI 1990/439 (as amended), the Insolvency Practitioners Regulations 1986, SI 1986/1995 continue to apply and have effect in relation to:

- 10 (a) any application made before 1 April 1990 in respect of which no authorisation has been granted or no written notice under the Insolvency Act 1986 s 397(2) (see para 40 post) has been given by the competent authority or no written notice under s 398 has been given by the

authority, before 1 April 1990 (Insolvency Practitioners Regulations 1990, SI 1990/439, reg 2(2)(a)); or

- 11 (b) any withdrawal of an authorisation pursuant to a notice under the Insolvency Act 1986 s 394(2) given before 1 April 1990 (Insolvency Practitioners Regulations 1990, SI 1990/439, reg 2(2)(b)).

Despite their revocation, the Insolvency Practitioners Regulations 1986, SI 1986/1995, other than Pt II (regs 2-8), and the Insolvency Practitioners (Amendment) Regulations 1986, SI 1986/2247, continue to apply and have effect in relation to any person appointed to act as an insolvency practitioner in relation to any person before 1 April 1990 in so far as he continues so to act in relation to that person on or after 1 April 1990 pursuant to that appointment or to a subsequent appointment to act as an insolvency practitioner within the scope of the Insolvency Practitioners Regulations 1986, SI 1986/1995, reg 11 (revoked) made on or after 1 April 1990: see the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 2(3).

As to the power of the Secretary of State to make regulations concerning insolvency practitioners see the Insolvency Act 1986 s 419; and para 1041 post. As to the Secretary of State see para 11 note 10 ante.

5 See para 15 ante.

6 The prescribed maximum is three years from the date on which the authorisation is granted: see the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 10.

7 Insolvency Act 1986 s 393(3).

8 Ibid s 415A(2)(a) (s 415A added by the Enterprise Act 2002 s 270(1)). See the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003, SI 2003/3363, art 3 (amended by SI 2004/476). As to the making of orders under the Insolvency Act 1986 s 415A (as added) see (by virtue of s 415A(4) (as added)) s 414(3), (5)-(7), (9); and para 1106 post.

9 Ibid s 415A(2)(b) (as added: see note 8 supra).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

16 Grant and refusal of authorisation

TEXT AND NOTES 5-7--An authorisation now, if not previously withdrawn, continues in force for one year: Insolvency Act 1986 s 393(3) (substituted by SI 2009/3081). But where an authorisation is granted the competent authority must, before its expiry (and without a further application) grant a further authorisation taking effect immediately after the expiry of the previous authorisation, unless it appears to the authority that the subject of the authorisation no longer complies with s 393(2): Insolvency Act 1986 s 393(3A) (added by SI 2009/3081).

NOTE 8--SI 2003/3363 art 3 further amended: SI 2007/133, SI 2008/672, SI 2009/487, SI 2009/3081.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/17. Matters for determining whether an applicant is fit and proper.

17. Matters for determining whether an applicant is fit and proper.

In determining whether an applicant¹ is a fit and proper person to act as an insolvency practitioner², the matters to be taken into account³ include:

- 42 (1) whether the applicant has been convicted of any offence involving fraud or other dishonesty or violence;
- 43 (2) whether the applicant has contravened any provision in any enactment contained in the insolvency legislation⁴ or in subordinate legislation made under any such enactment or any provision of the law of a country or territory outside Great Britain⁵ which corresponds to such legislation;
- 44 (3) whether the applicant has engaged in any practices in the course of carrying on business⁶ appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner⁷;
- 45 (4) whether, in respect of any insolvency practice⁸ carried on by the applicant at the date of or at any time prior to the making of the application⁹, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;
- 46 (5) whether the insolvency practice of the applicant is, has been or, where the applicant is not yet carrying on such a practice, will be, carried on with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner;
- 47 (6) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is or appears to be a conflict of interest between his so acting and any interest of his own whether personal, financial or otherwise without having received such consent as might be appropriate to his acting or continuing to act despite the existence of such circumstances¹⁰.

1 For these purposes, 'applicant' includes, where it is proposed to withdraw any authorisation on the grounds that the holder is not a fit and proper person (see para 23 post), the holder of the authorisation: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 4(2).

2 For the meaning of 'act as an insolvency practitioner' see para 8 ante. See also notes 7, 8 infra.

3 Ie without prejudice to the generality of the Insolvency Act 1986 s 393(2)(a) (see para 16 ante) or s 393(4) (a) (see para 23 post).

4 For these purposes, 'the insolvency legislation' means the following enactments: the Insolvency Act 1986; the Insolvency Act 1985; the Companies Act 1985 Pts XVIII-XXI (ss 462-674) (as amended); the Bankruptcy Act 1914; the Deeds of Arrangement Act 1914; the Bankruptcy (Scotland) Act 1985; the Bankruptcy (Scotland) Act 1913; the provisions of the enactments repealed by the Companies Consolidation (Consequential Provisions) Act 1985 s 29, Sch 1 relating to insolvency; the Pension Schemes Act 1993 Pt VII Ch II (ss 123-127) (as

amended); and the Employment Rights Act 1996 Pt XII (ss 182-190) (as amended): Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3); Interpretation Act 1978 s 17(2)(b).

5 For the meaning of 'Great Britain' see para 12 note 2 ante.

6 For these purposes, 'business' includes the carrying on of any trade, profession or vocation and the discharge of the functions relating to any office or employment: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3).

7 For these purposes, 'insolvency practitioner' is to be construed in accordance with the Insolvency Act 1986 s 388 (as amended) (see para 8 ante): Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3).

8 For these purposes, 'insolvency practice' means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Great Britain; and, for this purpose, acting as an insolvency practitioner includes acting as a trustee in sequestration or a judicial factor on the bankrupt estate of a deceased person: *ibid* reg 1(3).

9 For these purposes, 'application' means an application made by an individual to the competent authority for authorisation under the Insolvency Act 1986 s 393 (see para 16 ante) to act as an insolvency practitioner: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3).

10 *Ibid* reg 4(1).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/18. Education.

18. Education.

The prescribed requirements in respect of education¹ are:

- 48 (1) in the case of all applicants, other than an applicant who was born on or before 15 December 1951 or at the relevant time² is the holder of an authorisation to act as an insolvency practitioner, that he possesses at the relevant time one or more of the specified academic qualifications³ or such other academic or professional qualifications as indicate the attainment of an equivalent level of education to that attested by that qualification or, as the case may be, those qualifications⁴;
- 49 (2) in the case of all applicants, other than an applicant who at the relevant time is the holder of an authorisation to act as an insolvency practitioner and has been appointed an office-holder in at least one case under the law of England and Wales or Scotland or has acquired not less than 500 hours of higher insolvency work experience within the period of three years immediately prior to the relevant time⁵, that at the relevant time he must have passed the Joint Insolvency Examination set by the Joint Insolvency Examination Board or have acquired in, or been awarded in, a country or territory outside the United Kingdom professional or vocational qualifications which indicate that the applicant has the knowledge and competence that is attested by a pass in that examination⁶.

1 le for the purposes of the Insolvency Act 1986 s 393(2)(b): see para 16 ante.

2 For the meaning of 'relevant time' see para 15 note 4 ante.

3 The specified academic qualifications are:

12 (1) a degree (other than an honorary degree) conferred by a university in the United Kingdom or Republic of Ireland or by the Council for National Academic Awards or by any institution specified from time to time by Order of the Privy Council under the Further and Higher Education Act 1992 s 76(1) (see EDUCATION vol 15(2) (2006 Reissue) para 727) or the Further and Higher Education (Scotland) Act 1992 s 48(1); Insolvency Practitioners Regulations 1990, SI 1990/439, reg 6, Sch 1 Pt I para 1 (amended by SI 1993/221);

13 (2) a General Certificate of Education ('GCE'), a General Certificate of Secondary Education ('GCSE') or a Scottish Certificate of Education ('SCE') from a specified authority in five subjects which must include: (a) English language or English passed at Ordinary Level or Ordinary Grade or Standard Grade at an appropriate grade or at Advanced Level or Higher Grade; (b) two subjects passed at Advanced Level or Higher Grade at an appropriate grade in one sitting; (c) two subjects passed at Ordinary Level or Ordinary Grade or Standard Grade at appropriate grades or at Advanced Level or Higher Grade (Insolvency Practitioners Regulations 1990, SI 1990/439 Sch 1 Pt I para 2).

As to the authorities specified see Sch 1 Pt II. As to the appropriate grades see Sch 1 Pt I para 2, Note (i), (ii).

For the meaning of 'United Kingdom' see para 12 note 2 ante.

4 Ibid reg 5(1), (2), 6.

5 In determining whether an applicant falls within that requirement, the provisions of ibid reg 8(2) (see para 19 post) apply: reg 5(3).

6 Ibid reg 5(1), (3), 7.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/19. Practical training and experience.

19. Practical training and experience.

The prescribed requirements with respect to practical training and experience¹ are that an applicant² must:

- 50 (1) have been appointed an office-holder³ in not less than 30 cases within the period of ten years immediately prior to the relevant time; or
- 51 (2) have been first employed by a person carrying on insolvency practice⁴ in that practice not later than ten years prior to the relevant time and within the period of ten years referred to in head (1) above, have acquired not less than 7,000 hours of insolvency work experience⁵ whether in the employment of a person carrying on an insolvency practice or as an office-holder; and satisfy one of the following three requirements:

1

- 1. (a) he has been appointed an office-holder in at least five cases within the period of five years immediately prior to the relevant time; or
- 2. (b) he has acquired 1,000 hours or more of higher insolvency work experience⁶ within such period; or
- 3. (c) he can show that within such period he has achieved one of the following combinations of appointments as an office-holder and hours acquired of higher insolvency work experience: not less than four cases and 200 hours; not less than three cases and 400 hours; not less than two cases and 600 hours; not less than one case and 800 hours⁷.

2

In determining whether an applicant falls within the above provisions:

- 52 (i) no account is to be taken of any case where he was appointed to the office of receiver or to a corresponding office under the law of a country or territory outside Great Britain by or on behalf of a creditor who at the time of appointment was an associate⁸ of the applicant or where, in a members' voluntary winding up or in a corresponding procedure under the laws of a country or territory outside Great Britain, he was appointed liquidator at a general meeting where his associates were entitled to exercise or control the exercise of one-third or more of the voting power at that general meeting;
- 53 (ii) where the applicant has been an office-holder in relation to two or more companies which were associates at the time of appointment, or two or more individuals who were carrying on business in partnership with each other at the time of appointment, he is to be treated as having held office in only one case in respect of all offices held in relation to the companies which were associates or in respect of all offices held in relation to the individuals who were in partnership, as the case may be⁹.

1 le for the purposes of the Insolvency Act 1986 s 393(2)(b): see para 16 ante.

2 le all applicants, other than an applicant who at the relevant time is the holder of an authorisation to act as an insolvency practitioner and has been appointed an office-holder (see note 3 *infra*) in at least one case under the law of England and Wales or Scotland or has acquired not less than 500 hours of higher insolvency work experience within the period of three years immediately prior to the relevant time. For the meaning of 'relevant time' see para 15 note 4 *ante*.

3 For these purposes, 'office-holder' means a person who acts or has acted as an insolvency practitioner, a trustee in sequestration, or a judicial factor on the bankrupt estate of a deceased person or in a corresponding capacity under the law of any country or territory outside Great Britain: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3). The reference to an insolvency practitioner is to be construed in accordance with the Insolvency Act 1986 s 388 (as amended) (see para 8 *ante*) but without regard to s 388(5) (as substituted); and references to an office-holder who has been appointed or to a person who has been appointed an office-holder include the official receiver in any case where the official receiver is or has been an office-holder, whether by virtue of his office or otherwise: see the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 8(5). For the meaning of 'Great Britain' see para 12 note 2 *ante*.

4 For the meaning of 'insolvency practice' see para 17 note 8 *ante*. For these purposes, employment by a person carrying on insolvency practice includes Crown employment in the Insolvency Service of the Department of Trade and Industry (*ibid* reg 8(4)); and a person carrying on insolvency practice includes a firm or partnership (reg 8(6)). 'Crown employment' is to be construed in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992 s 273(3) (see EMPLOYMENT vol 40 (2009) PARA 848): Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3); Interpretation Act 1978 s 17(2)(b).

5 For these purposes, 'insolvency work experience' means engagement in work related to the administration of the estate of persons in respect of which an office-holder has been appointed: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3).

6 For these purposes, 'higher insolvency work experience' means engagement in work related to the administration of the estates of persons in respect of which an office-holder has been appointed where the work involves the management or supervision of the conduct of a case on behalf of that office-holder: *ibid* reg 1(3).

7 *Ibid* regs 5(3), 8(1). Where in order to satisfy all or any of the requirements set out in reg 8(1) an applicant relies on appointment as an office-holder or the acquisition of insolvency work experience or higher insolvency work experience in relation to cases under the laws of a country or territory outside Great Britain, he must demonstrate that he has no less than 1,400 hours of insolvency work experience or higher insolvency work experience in cases under the law of England and Wales or Scotland acquired within the period of the two years immediately prior to the relevant time and that, where appropriate, he has a good command of the English language: regs 5(3), 8(3).

8 For these purposes, 'associate' is to be construed in accordance with the Insolvency Act 1986 s 435 (see para 5 *ante*): Insolvency Practitioners Regulations 1990, SI 1990/439, reg 1(3).

9 *Ibid* regs 5(3), 8(2).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/20. Requirements for security or caution.

20. Requirements for security or caution.

The requirements in respect of security or caution for the proper performance of the functions of an insolvency practitioner¹ are that:

- 54 (1) there is in force at the time when an insolvency practitioner is appointed to act in relation to any person² a bond which complies with the specified requirements³ under which the surety or cautioner is liable in the general penalty sum of £250,000; and
- 55 (2) there is in force in relation to that bond with effect from the time when an insolvency practitioner is appointed to act in relation to any person a specific penalty in respect of the practitioner acting in relation to that person under which the specific penalty sum is not less than the value of that person's estimated assets⁴;
- 56 (3) where, at any time before the practitioner obtains his release or discharge in respect of his acting in relation to that person, he forms the opinion that the value of the assets comprised in the estate of that person is higher than the penalty sum under the current specific penalty⁵, being a penalty sum less than £5,000,000, there is obtained by the practitioner a further specific penalty in respect of his acting in relation to that person under which the penalty sum is at least equal to that higher value or £5,000,000, whichever is the less⁶.

The bond must be retained by the recognised professional body or, as the case may be, the competent authority by which the practitioner has been authorised to act as an insolvency practitioner⁷.

Where an insolvency practitioner is appointed to be:

- 57 (a) provisional liquidator in the winding up by the court of a company and he is subsequently appointed to be liquidator of that company; or
- 58 (b) liquidator in a voluntary winding up of a company and he is subsequently appointed to be liquidator in the winding up of that company by the court; or
- 59 (c) an administrator of a company and he is subsequently appointed⁸ to be a liquidator of that company; or
- 60 (d) a nominee in relation to a voluntary arrangement under the Insolvency Act 1986⁹ and he subsequently becomes supervisor of the arrangement,

and a specific penalty is obtained¹⁰ in respect of the earlier or earliest such appointment, it is not necessary for such a specific penalty to be obtained in respect of the subsequent appointment of the practitioner in any of those circumstances¹¹.

¹ le for the purposes of the Insolvency Act 1986 s 390(3)(b): see para 13 ante. For the meaning of 'insolvency practitioner' see paras 8, 17 note 7 ante.

Save as provided in the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 2(3) (see para 16 note 4 ante), Pt III (regs 11-15A) (as amended) (see infra and paras 21-23 post) apply in relation to any person appointed on or after 1 April 1990 to act as an insolvency practitioner in relation to any person: reg 11.

2 For the meaning of 'person' see para 13 note 2 ante.

3 For these purposes, the specified requirements are that the bond must be a bond in a form approved by the Secretary of State which contains provision whereby: (1) a surety or cautioner undertakes to be jointly and severally liable with the insolvency practitioner for the proper performance by the practitioner of the duties and obligations imposed upon the practitioner by the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985 and the subordinate legislation made under either of those Acts; (2) the liability of the surety or cautioner and the practitioner is in both a general penalty sum and a specific penalty sum in respect of each person in respect of whom the practitioner acts and is limited to a sum equivalent to the losses caused by the fraud or dishonesty of the practitioner, whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person or persons committed with the connivance of the practitioner; (3) a bordereau is to be submitted to the surety or cautioner containing an entry completed by the practitioner evidencing the acceptance by the surety or cautioner of liability in respect of the practitioner acting in relation to a particular person in the amount of the specific penalty; and (4) any claims made under the bond are made firstly in respect of the specific penalty sum: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 12(1)(a), Sch 2 Pt I (amended by SI 1993/221). As to the Secretary of State see para 11 note 10 ante.

4 For these purposes, but subject to head (3) infra:

- 14 (1) the value of a person's assets is: (a) where the practitioner is appointed to act as a supervisor of a voluntary arrangement approved by a company under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq post), a provisional liquidator, a liquidator, an administrator appointed under Pt II (s 8) (as amended) (see para 145 et seq post) or a nominee in relation to a voluntary arrangement under Pt I (as amended) (except in a case where prior to 15 January 2003 a copy of the written notice of the proposal had been endorsed by the intended nominee under the Insolvency Rules 1986, SI 1986/1925, rr 1.4(3), 1.12(2) or the liquidator or administrator had sent out a notice summoning the meetings as required by r 1.11: see para 9 note 6 ante), the value at the date of the appointment of the practitioner estimated by him having regard, where appropriate, to the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 12(1)(b), Sch 2 Pt II para 2 (see head (2) infra); (b) where the practitioner is appointed to act as an administrative receiver, an amount equivalent to that part of the assets of the company to which the practitioner is appointed which at the date of the appointment would appear to be available for the unsecured creditors of the company, whether in respect of the preferential debts of the company or otherwise, were the company to go into liquidation at the date of the appointment (see Sch 2 Pt II para 1(a)(iv), (vi)-(viii), (xi), (b) (Sch 2 Pt II paras 1(a), 2(a) amended by SI 2002/2710));
- 15 (2) in estimating the value of a person's assets, the practitioner must have regard to: (a) in the case of an administrator, the estimated value of the assets of the company as disclosed in any report on the company's affairs prepared pursuant to the Insolvency Rules 1986, SI 1986/1925, r 2.2 (see para 2085 post) or, as the case may be, pursuant to the Insolvency (Scotland) Rules 1986, SI 1986/1915, r 2.1; and (b) in any other case specified in head (1) supra, the estimated value of those assets disclosed in any statement of affairs in respect of such cases and any comments of creditors or the official receiver on that statement (Insolvency Practitioners Regulations 1990, SI 1990/439, Sch 2 Pt II para 2(a), (b) (as so amended));
- 16 (3) in any case where the value of a person's assets estimated in accordance with heads (1) and (2) supra is less than £5,000, the value of those assets is for these purposes deemed to be £5,000; and in any case where the value of a person's assets estimated in accordance with heads (1) and (2) supra is more than £5,000,000, the value of those assets for these purposes is deemed to be £5,000,000 (Sch 2 Pt II paras 3, 4).

5 For these purposes, 'current specific penalty' means the specific penalty for the time being in force which has been obtained pursuant to *ibid* reg 12(1)(b) or (c) (see heads (2), (3) in the text supra), as the case may be: reg 12(2) (amended by SI 1993/221).

6 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 12(1) (amended by SI 1993/221).

7 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 12(3). For the meaning of 'recognised professional body' see para 14 ante; and for the meaning of 'competent authority' see para 15 ante.

8 *le* pursuant to the Insolvency Act 1986 s 140 (as amended): see para 558 post.

9 *le* *ibid* Pt I (as amended): see para 71 et seq post.

10 *le* under the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 12(1) (as amended): see the text and notes 1-6 supra.

11 See *ibid* reg 13 (amended by SI 1993/221; SI 2002/2710).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in *PARA 2 NOTE 5*.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/21. Inspection and retention requirements in England and Wales.

21. Inspection and retention requirements in England and Wales.

Where an insolvency practitioner¹ is appointed to act in relation to any person², he must retain a copy of the bordereau containing the entry evidencing the specific penalty obtained by him in respect of that appointment or any further specific penalty obtained by him in respect of so acting and must produce it on demand for inspection to any person reasonably appearing to him to be a creditor or contributory of the person to whom he has been appointed, to the person (being an individual) to whom he has been appointed, to any partner in the partnership to which he has been appointed and, where the person to whom he has been appointed is a company, to any director or other officer of the company³ and to the Secretary of State⁴.

The insolvency practitioner must retain the copy of the bordereau containing the entry required to be produced under these provisions for a period of two years from the date on which he is granted his release or discharge in respect of that appointment⁵.

1 For the meaning of 'insolvency practitioner' see paras 8, 17 note 7 ante.

2 For the meaning of 'person' see para 13 note 2 ante.

3 For these purposes, 'company' means a company which the courts in England and Wales have jurisdiction to wind up: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 14(3) (reg 14 substituted by SI 1993/221). As to the courts having jurisdiction to wind up a company see para 438 et seq post.

4 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 14(1) (as substituted: see note 3 supra). As to the requirement to submit a bordereau to the authorising authority see para 22 post. As to the Secretary of State see para 11 note 10 ante.

5 Ibid reg 14(2) (as substituted: see note 3 supra).

UPDATE

8-45 Insolvency Practitioners and their Qualification

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15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/22. Requirements to submit bordereau to authorising authority.

22. Requirements to submit bordereau to authorising authority.

In respect of each calendar month, an insolvency practitioner¹ must submit to the authorising body² a copy of the bordereau containing particulars of:

- 61 (1) any appointment during that calendar month to act as insolvency practitioner provided that, where it is not practicable to do so, such particulars may be included in a subsequent bordereau, but no later than the bordereau relating to the second month after the month of appointment;
- 62 (2) any appointment to act as insolvency practitioner in respect of which, during that calendar month, he forms the opinion that the amount of the penalty sum under the current specific penalty must be increased³, provided that, where it is not practicable to do so, such particulars may be included in a subsequent bordereau, but no later than the bordereau relating to the second month after the month in which he forms the relevant opinion;
- 63 (3) any appointment to act as insolvency practitioner in respect of which, during that calendar month, he has obtained his release or discharge⁴, provided that, where it is not practicable to do so, such particulars may be included in a subsequent bordereau⁵.

If, in respect of any calendar month, no particulars as specified above are contained in the bordereau, it must nevertheless be supplied to the authorising body, with a statement thereon that either there are no such relevant particulars to be supplied or that it is not practicable to supply such particulars, as the case may be⁶.

1 For the meaning of 'insolvency practitioner' see paras 8, 17 note 7 ante.

2 For these purposes, the 'authorising body', in relation to any practitioner, is the professional body by virtue of membership of which that practitioner is authorised to act (see para 14 ante), or the competent authority which granted his authorisation (see para 15 et seq ante), whichever the case may be: Insolvency Practitioners Regulations 1990, SI 1990/439, reg 18(1).

3 Ie in accordance with ibid reg 12(1)(c): see para 20 ante.

4 For these purposes, 'release or discharge' includes any case where the insolvency practitioner has acted as nominee in relation to a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq post) and is replaced by another insolvency practitioner whether acting as nominee or supervisor in relation to the voluntary arrangement in question (except in a case where prior to 15 January 2003 a copy of the written notice of the proposal had been endorsed by the intended nominee under the Insolvency Rules 1986, SI 1986/1925, rr 1.4(3), 1.12(2) or the liquidator or administrator had sent out a notice summoning the meetings as required by r 1.11: see para 9 note 6 ante): Insolvency Practitioners Regulations 1990, SI 1990/439, reg 15A(3) (reg 15A added by SI 1993/221; and the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 15A(3) added by SI 2002/2710).

5 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 15A(1) (as added: see note 4 supra).

6 Ibid reg 15A(2) (as added: see note 4 supra).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

15-22 Authorisation by competent authority ... Requirements to submit bordereau to authorising authority

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/23. Withdrawal of authorisation.

23. Withdrawal of authorisation.

An authorisation to act as an insolvency practitioner granted by a competent authority¹ may be withdrawn by the competent authority if it appears to it that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner², or that the holder:

- 64 (1) has failed to comply with any provision in relation to insolvency practitioners and their qualification made in or under the Insolvency Act 1986³; or
- 65 (2) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information⁴.

Any such authorisation may also be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation⁵.

1 Ie under the Insolvency Act 1986 s 393(1)-(3): see paras 15-16 ante. For the meaning of 'competent authority' see para 15 ante.

2 As to the matters which determine whether a person is fit and proper to act as an insolvency practitioner see para 17 ante. For the meaning of 'act as an insolvency practitioner' see para 8 ante.

3 Ie the Insolvency Act 1986 Pt XIII (ss 388-398) (as amended) (see para 8 et seq ante) or regulations made under Pt XIII (as amended) or Pt XV (ss 411-422) (as amended) (see para 1041 et seq post).

4 Ibid s 393(4).

5 Ibid s 393(5).

UPDATE

8-45 Insolvency Practitioners and their Qualification

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23 Withdrawal of authorisation

TEXT AND NOTES--Where an authorisation is withdrawn, Insolvency Act 1986 s 393(3A) (see PARA 16) does not require a further authorisation to be granted or, if a further authorisation has already been granted at the time of the withdrawal, the further authorisation is also withdrawn: Insolvency Act 1986 s 393(6) (added by SI 2009/3081).

NOTE 4--Insolvency Act 1986 s 393(4) amended: SI 2009/3081.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/24. Notice of grant or proposed refusal or withdrawal of authorisation.

24. Notice of grant or proposed refusal or withdrawal of authorisation.

Where a competent authority¹ grants an authorisation², it must give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect³; and, where the authority proposes to refuse an application, or to withdraw an authorisation⁴, it must give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act⁵. In the case of a proposed withdrawal, the notice must state the date on which it is proposed that the withdrawal should take effect⁶.

1 For the meaning of 'competent authority' see para 15 ante.

2 Ie under the Insolvency Act 1986 s 393: see para 16 ante.

3 Ibid s 394(1).

4 Ie under ibid s 393(4): see para 23 ante.

5 Ibid s 394(2). A notice under s 394(2) must give particulars of the rights exercisable under s 395 (see para 25 post) and s 396 (see para 26 post) by a person on whom the notice is served: s 394(4).

6 Ibid s 394(3).

UPDATE

8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(2) REQUISITE QUALIFICATION AND MEANS OF OBTAINING IT; SECURITY AND FILING REQUIREMENTS/25. Right to make representations.

25. Right to make representations.

A person on whom a notice is served by the competent authority¹ that it proposes to refuse or withdraw an authorisation² may, within 14 days after the date of service, make written representations to the competent authority³. The competent authority must have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be⁴.

1 For the meaning of 'competent authority' see para 15 ante.

2 Ie under the Insolvency Act 1986 s 394(2): see para 24 ante.

3 Ibid s 395(1). For the meaning of 'competent authority' see para 15 ante.

4 Ibid s 395(2).

UPDATE

8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/26. Reference to the tribunal.

(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL

26. Reference to the tribunal.

Where a person is served with a notice by the competent authority¹ that it proposes to refuse or withdraw an authorisation², he may:

- 66 (1) at any time within 28 days after the date of service of the notice³; or
- 67 (2) at any time after the making by him of representations⁴ and before the end of the period of 28 days after the date of the service on him of a notice by the competent authority that the authority does not propose to alter its decision in consequence of the representations⁵,

give written notice to the authority requiring the case to be referred to the Insolvency Practitioners Tribunal⁶. Where such a requirement is made, then, unless the competent authority has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation, and, within seven days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made, it must refer the case to the Insolvency Practitioners Tribunal⁷.

On referring a case to the tribunal, the competent authority must send to the tribunal a copy of the written notice served by it on the applicant⁸, together with a copy of the notification by the applicant that he wishes the case to be referred to the tribunal, and give notice to the applicant of the date on which the case has been referred by it to the tribunal and of the address to which any statement, notice or other document required⁹ to be given or sent to the tribunal is to be given or sent¹⁰. Within 21 days of referring the case to the tribunal, the competent authority must send to the tribunal such further information and copies of such other documents and records as it considers would be of assistance to the tribunal, and must, at the same time, send to the applicant such further information and copies of such other documents and records; or, if there is or are no such information or copies, the competent authority must within such period notify the tribunal and the applicant to that effect¹¹.

1 For the meaning of 'competent authority' see para 15 ante.

2 *Ie* under the Insolvency Act 1986 s 394(2): see para 24 ante.

3 *Ibid* s 396(2)(a).

4 *Ie* under *ibid* s 395: see para 25 ante.

5 *Ibid* s 396(2)(b).

6 *Ibid* s 396(2). As to the position where no notice is given requiring the case to be referred see para 41 post. The Insolvency Practitioners Tribunal, which was established under the Insolvency Act 1985 s 8(6), Sch 1 (repealed), continues in being under the Insolvency Act 1986: see s 396(1). As to the constitution of the Insolvency Practitioners Tribunal see para 38 post.

7 *Ibid* s 396(3).

8 For the purposes of the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, 'applicant' means an applicant for authorisation under the Insolvency Act 1986 s 393 (see para 16 ante) or, where it is proposed to withdraw an authorisation granted under s 393 (see para 23 ante), the holder of the authorisation: Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 1(2)(b). These regulations were made under the Insolvency Act 1985 Sch 1 para 4(4) (repealed), but by virtue of s 437, Sch 11 para 23 (see para 2 note 4 ante) and the Interpretation Act 1978 s 17(2)(b) they have effect as if made under the Insolvency Act 1986 s 396.

9 le by the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952: see para 27 et seq post.

10 See *ibid* r 2(1). As to the powers conferred on the Secretary of State to make rules regulating the procedure before the Insolvency Practitioners Tribunal see para 30 post. As to the Secretary of State see para 11 note 10 ante.

11 *Ibid* r 2(2).

UPDATE

8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/27. Statement of the applicant.

27. Statement of the applicant.

Within 21 days after the competent authority¹ has sent to the applicant² the further material³ or, as the case may be, after it has sent to him the notification⁴, the applicant must send to the Insolvency Practitioners Tribunal a statement of his grounds for requiring the case to be investigated by the tribunal specifying:

- 68 (1) which matters of fact, if any, contained in the written notice served on him⁵ he disputes;
- 69 (2) any other matters which he considers should be drawn to the attention of the tribunal; and
- 70 (3) the names and addresses of any witnesses whose evidence he wishes the tribunal to hear⁶.

The applicant must, on sending such statement to the tribunal, send a copy to the competent authority⁷.

1 For the meaning of 'competent authority' see para 15 ante.

2 For the meaning of 'applicant' see para 26 note 8 ante.

3 I.e. the material mentioned in the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 2(2): see para 26 ante.

4 I.e. under *ibid* r 2: see para 26 ante.

5 I.e. under the Insolvency Act 1986 s 394(2): see para 24 ante.

6 See the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 3(1). See also para 26 note 8 ante.

7 See *ibid* r 3(2).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/28. Appointment of solicitor and counsel to the tribunal.

28. Appointment of solicitor and counsel to the tribunal.

At any time after the case has been referred to it, the Insolvency Practitioners Tribunal may appoint the Treasury Solicitor¹ and counsel, or, in Scottish cases², may request the Treasury Solicitor to appoint a solicitor and may appoint counsel, to exercise the functions of assisting the tribunal in seeking and presenting evidence in accordance with the requirements of the tribunal, and representing the public interest in relation to the matters before the tribunal³.

1 For these purposes, 'Treasury Solicitor' means the Solicitor for the affairs of Her Majesty's Treasury as provided in the Treasury Solicitor Act 1876 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 541); Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 1(2)(c). See also para 26 ante.

2 For these purposes, 'a Scottish case' means any case where, at the time of the reference of the case to the tribunal, the applicant is either habitually resident in or has his principal place of business in Scotland: *ibid* r 1(2)(d).

3 *Ibid* r 4.

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8-45 Insolvency Practitioners and their Qualification

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29. Investigation by the tribunal.

Where a case has been referred to the Insolvency Practitioners Tribunal¹, the tribunal must investigate the case, and make a report to the competent authority² stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion; and it is the duty of the competent authority to decide the matter accordingly³.

After the receipt of the statement of the applicant or, if no such statement is received, after the expiry of the 21 days in which the applicant must send his statement⁴, the tribunal must investigate the case and make a report by carrying out such inquiries as it thinks appropriate for that purpose into and concerning the information, documents, records and matters placed before it⁵, and, in carrying out such inquiries, the following provisions⁶ apply⁷.

1 Ie under the Insolvency Act 1986 s 396: see para 26 ante.

2 For the meaning of 'competent authority' see para 15 ante.

3 Ibid s 397(1). As to the reports to be made by the tribunal following investigation see para 40 post.

4 See para 26 ante. For the meaning of 'applicant' see para 26 note 8 ante.

5 Ie under the provisions of the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, rr 2, 3: see paras 26, 27 ante.

6 Ie ibid rr 6-16: see para 30 et seq post.

7 Ibid r 5. See also para 26 ante.

UPDATE

8-45 Insolvency Practitioners and their Qualification

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30. Procedure of and methods of inquiry by the tribunal.

Any investigation by the Insolvency Practitioners Tribunal must be so conducted as to afford a reasonable opportunity for representations to be made to the tribunal by or on behalf of the person whose case is the subject of the investigation¹; and the Secretary of State may make rules for regulating the procedure on any investigation by the tribunal².

As soon as practicable after the tribunal has considered the subject matter of the investigation, it must notify the competent authority and the applicant³ of the manner in which it proposes to conduct its inquiries and in particular whether oral evidence is to be taken⁴.

The tribunal must give the competent authority and the applicant a reasonable opportunity of making representations on the manner in which it proposes to conduct its inquiries and such representations may be made orally or in writing at the option of the competent authority or the applicant, as the case may be⁵. After considering any such representations that may be so made, the tribunal must notify the competent authority and the applicant whether and, if so, in what respects, it has decided to alter the manner in which it proposes to carry out its inquiries⁶.

If, at any subsequent stage in the investigation, the tribunal proposes to make any material change in the manner in which its inquiries are to be carried out, it must notify the competent authority and the applicant and the provisions described above⁷ apply accordingly⁸.

1 Insolvency Act 1986 s 396(1), Sch 7 para 4(1).

2 Ibid Sch 7 para 4(4). This power is subject to the provisions of Sch 7 para 4(1)-(3), (5) (see the text to note 1 supra; and para 31 post): Sch 7 para 4(4). As to the Secretary of State see para 11 note 10 ante.

3 For the meaning of 'competent authority' see para 15 ante. For the meaning of 'applicant' see para 26 note 8 ante.

4 See the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 6(1). See also para 26 note 8 ante. As to the taking of evidence see para 31 post.

5 Ibid r 6(2).

6 Ibid r 6(3).

7 Ie ibid r 6(2), (3): see the text and notes 5, 6 supra.

8 Ibid r 6(4).

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8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/31. Taking of evidence.

31. Taking of evidence.

For the purposes of its investigation¹, the Insolvency Practitioners Tribunal:

- 71 (1) may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any books, papers and other records² in his possession or under his control which the tribunal considers it necessary for the purposes of the investigation to examine; and
- 72 (2) may take evidence on oath, and for the purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined,

but no person is to be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him³.

Every person who:

- 73 (a) without reasonable excuse fails to attend in obedience to a summons issued under these provisions, or refuses to give evidence; or
- 74 (b) intentionally alters, suppresses, conceals or destroys or refuses to produce any document which he may be required to produce for the purpose of an investigation by the tribunal,

is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴.

When, in the carrying out of its inquiries, the tribunal:

- 75 (i) wishes to examine a witness orally, it must give notice to the applicant and the competent authority⁵ of the time and place at which the examination will be held, and the applicant and the competent authority are entitled to be present at the examination by the tribunal of any witness and to put such additional questions to him as may appear to the tribunal to be relevant to the subject matter of the investigation; or
- 76 (ii) takes into consideration documentary evidence or evidence in the form of computer or other non-documentary records not placed before the tribunal⁶, the tribunal must give the applicant and the competent authority an opportunity of inspecting that evidence and taking copies or an appropriate record thereof⁷.

1 See paras 29, 30 ante.

2 For these purposes, 'records' includes computer records and other non-documentary records: Insolvency Act 1986 s 436.

3 Ibid s 396(1), Sch 7 para 4(2).

4 Ibid s 430, Sch 7 para 4(3), Sch 10. 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act

1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128 (as amended; prospectively repealed); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

5 For the meaning of 'applicant' see para 26 note 8 ante.

6 See under the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, rr 2, 3: see paras 26, 27 ante.

7 Ibid r 7. See also para 26 note 8 ante.

UPDATE

8-45 Insolvency Practitioners and their Qualification

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32. Final representations.

After the Insolvency Practitioners Tribunal has completed the taking of such evidence as it considers necessary for the purpose of the investigation¹, it must give the applicant and the competent authority² a reasonable opportunity of making representations on the evidence and on the subject matter of the investigation generally; and such representations may be made orally or in writing at the option of the applicant or, as the case may be, of the competent authority³.

1 As to the investigation see paras 29, 30 ante.

2 For the meaning of 'applicant' see para 26 note 8 ante. For the meaning of 'competent authority' see para 15 ante.

3 See the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 8. See also para 26 note 8 ante.

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8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/33. Representation at a hearing.

33. Representation at a hearing.

At the hearing of oral representations or the taking of oral evidence before the Insolvency Practitioners Tribunal, the applicant¹ may be represented by counsel or solicitor, or by any other person allowed by the tribunal to appear on his behalf; and the competent authority² may be represented by counsel or solicitor or by any officer of the competent authority³.

1 For the meaning of 'applicant' see para 26 note 8 ante.

2 For the meaning of 'competent authority' see para 15 ante.

3 Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 9. See also para 26 note 8 ante.

UPDATE

8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/34. Service of written representations.

34. Service of written representations.

Where the competent authority or the applicant¹ makes any written representations to the Insolvency Practitioners Tribunal in the course of its investigation, the competent authority or, as the case may be, the applicant must send a copy of such representations to the other².

¹ For the meaning of 'competent authority' see para 15 ante. For the meaning of 'applicant' see para 26 note 8 ante.

² Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 10. See also para 26 note 8 ante.

UPDATE

8-45 Insolvency Practitioners and their Qualification

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/35. Hearings in public or private.

35. Hearings in public or private.

The Insolvency Practitioners Tribunal must conduct its investigation in private and, save to the extent that the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986¹ provide for the hearing of oral representations or for the taking of oral evidence and the applicant² requests that any such hearing be in public, no person other than those entitled to represent the applicant or the competent authority³ or having the leave of the tribunal is entitled to be present at any such hearing⁴.

Nothing in these provisions prevents a member of the Council on Tribunals or of its Scottish Committee⁵ from attending in his capacity as such a member any such hearing⁶.

1 Ie the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952. See also para 26 note 8 ante.

2 For the meaning of 'applicant' see para 26 note 8 ante.

3 Ie under the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 9: see para 33 ante.

4 Ibid r 11(1).

5 As to the Council on Tribunals and the Scottish Committee see the Tribunals and Inquiries Act 1992 ss 1-4 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) paras 55-57.

6 Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 11(2).

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8-45 Insolvency Practitioners and their Qualification

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36. Notices and time limits.

Any notice or other document required by the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986¹ to be given or sent may be given or sent by first class post².

The Insolvency Practitioners Tribunal may in any investigation permit the competent authority or the applicant³ to send any document or perform any act after the time prescribed in the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986 for so sending or performing and such permission may be granted after any such time has expired⁴.

1 Ie the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952. See also para 26 note 8 ante.

2 Ibid r 12.

3 For the meaning of 'competent authority' see para 15 ante. For the meaning of 'applicant' see para 26 note 8 ante.

4 See the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 13.

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37. Powers of chairman.

Anything required or authorised to be done by the Insolvency Practitioners Tribunal in the course of an investigation¹ may be done by the chairman except:

- 77 (1) the settling of the manner in which the tribunal is to conduct its investigation²;
- 78 (2) the hearing or consideration of any representations made by the competent authority or the applicant³; and
- 79 (3) the taking of evidence, whether orally or in the form of documents or non-documentary records⁴.

1 See para 29 et seq ante.

2 See para 30 ante.

3 For the meaning of 'competent authority' see para 15 ante. For the meaning of 'applicant' see para 26 note 8 ante.

4 See the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 14. See also para 26 note 8 ante. As to the taking of evidence see para 31 ante.

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8-45 Insolvency Practitioners and their Qualification

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38. Constitution of the tribunal.

The Secretary of State must draw up and from time to time revise¹:

- 80 (1) a panel of persons who have a seven-year general qualification² or are advocates or solicitors in Scotland of at least seven years' standing, and are nominated for the purpose by the Lord Chancellor or the Lord President of the Court of Session³; and
- 81 (2) a panel of persons who are experienced in insolvency matters⁴,

and the members of the Insolvency Practitioners Tribunal must be selected from those panels⁵.

The Secretary of State may out of money provided by Parliament pay to members of the tribunal such remuneration as he may with the approval of the Treasury determine; and such expenses of the tribunal as the Secretary of State and the Treasury may approve must be defrayed by the Secretary of State out of money so provided⁶.

1 The power to revise the panels (see heads (1) and (2) in the text) includes power to terminate a person's membership of either of them, and is accordingly to that extent subject to the Tribunals and Inquiries Act 1992 s 7 (as amended) (which makes it necessary to obtain the concurrence of the Lord Chancellor and the Lord President of the Court of Session to dismissals in certain cases: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 14); Insolvency Act 1986 s 396(1), Sch 7 para 1(2) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 19). As to the Secretary of State see para 11 note 10 ante.

2 In the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 742.

3 Insolvency Act 1986 Sch 7 para 1(1)(a) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 67). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

4 Insolvency Act 1986 Sch 7 para 1(1)(b).

5 See *ibid* Sch 7 para 1(1). The manner of selection must be in accordance with Sch 7 (as amended): see para 39 post.

6 *Ibid* Sch 7 para 2. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

UPDATE

8-45 Insolvency Practitioners and their Qualification

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38 Constitution of the tribunal

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 3--Any appointment to the office of member of Insolvency Practitioners Tribunal panel in exercise of the function under the 1986 Act Sch 7 para 1(1)(a) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3, in accordance with ss 85-93, 96: see COURTS vol 10 (Reissue) PARA 515B.18.

The Lord Chancellor's function under the 1986 Act Sch 7 para 1(1)(a) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

1986 Act Sch 7 para 1(1)(a) further amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 19.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(3) REFERENCE TO INSOLVENCY PRACTITIONERS TRIBUNAL/39. Sittings of the tribunal.

39. Sittings of the tribunal.

For the purposes of carrying out its functions in relation to any cases referred to it, the Insolvency Practitioners Tribunal may sit either as a single tribunal or in two or more divisions¹; and the functions of the tribunal in relation to any case referred to it must be exercised by three members consisting of a chairman² and two other members³.

¹ Insolvency Act 1986 s 396(1), Sch 7 para 3(1).

² The chairman must be selected by the Secretary of State from the panel drawn up under *ibid* Sch 7 para 1(1)(a) (as amended) (see para 38 head (1) ante): Sch 7 para 3(2)(a). As to the Secretary of State see para 11 note 10 ante.

³ *Ibid* Sch 7 para 3(2). The two other members must be selected by the Secretary of State from the panel drawn up under Sch 7 para 1(1)(b) (see para 38 head (2) ante): Sch 7 para 3(2)(b).

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40. Report by the tribunal following investigation.

Following a reference to it, the Insolvency Practitioners Tribunal must make a report to the competent authority¹ stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion². The tribunal must so make its report on the case to the competent authority no later than four months after the date on which the case is referred to it³ unless the competent authority, on the application of the tribunal, permits the report to be made within such further period as the competent authority may notify in writing to the tribunal⁴.

The competent authority may only permit the report to be made within such further period where it appears to that authority that, through exceptional circumstances, the tribunal will be unable to make its report within the period of four months referred to above⁵.

The tribunal must send a copy of the report to the applicant⁶ or, as the case may be, the holder of the authorisation; and the competent authority must serve him with a written notice of the decision made by it in accordance with the report⁷.

The competent authority may, if it thinks fit, publish the report of the tribunal⁸.

1 For the meaning of 'competent authority' see para 15 ante.

2 Insolvency Act 1986 s 397(1)(b). See also para 29 ante.

3 *Ibid* s 396(3); see para 26 ante.

4 Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952, r 15(1). See also para 26 note 8 ante.

5 *Ibid* r 15(2).

6 For the meaning of 'applicant' see para 26 note 8 ante.

7 Insolvency Act 1986 s 397(2).

8 *Ibid* s 397(3).

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41. Refusal or withdrawal of authorisation without reference to the tribunal.

Where, in the case of any proposed refusal or withdrawal of an authorisation, the periods within which a person may give written notice to the competent authority¹ requiring the case to be referred to the Insolvency Practitioners Tribunal have expired², the competent authority may give written notice of the refusal or withdrawal to the person concerned³.

1 For the meaning of 'competent authority' see para 15 ante.

2 This refers to either:(1) the expiry of the period mentioned in the Insolvency Act 1986 s 396(2)(a) (see para 26 ante) without the making of any requirement under s 396(2)(a) or of any representations under s 395 (see para 25 ante); or (2) where the competent authority has given a notice such as is mentioned in s 396(2)(b) (see para 26 ante), the expiry of the period there mentioned without the making of any such requirement: s 398(a), (b).

3 See *ibid* s 398. The written notice of the refusal or withdrawal of the authorisation to the person concerned must be in accordance with the proposal in the notice given under s 394(2) (see para 24 ante): s 398.

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(4) RECORDS TO BE KEPT BY INSOLVENCY PRACTITIONERS

42. Records to be kept.

In respect of the estate of each person¹ in relation to whom an insolvency practitioner² acts in his capacity as such³ and in respect of the security or caution maintained by the practitioner for the proper performance of his functions in relation to that estate⁴, the practitioner must maintain a record in the prescribed form⁵ and must make forthwith upon the occurrence of any events specified in that form the appropriate entry in the record⁶. Each record so maintained must be kept in such a way as to be capable of being produced by the insolvency practitioner separately from any other record⁷.

1 For the meaning of 'person' see para 13 note 2 ante.

2 For the meaning of 'insolvency practitioner' see para 17 note 7 ante.

3 I.e. in any of the capacities specified in the Insolvency Act 1986 s 388 (as amended): see para 8 ante.

Save as provided in the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 2(3) (see para 16 note 4 ante), Pt IV (regs 16-20) (see the text and notes 4-7 infra; and paras 43-45 post) applies in relation to any person appointed on or after 1 April 1990 to act as an insolvency practitioner in relation to any person: reg 16.

4 I.e. in compliance with the Insolvency Act 1986 s 390(3): see para 13 ante.

5 For the prescribed form of record see the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 17, Sch 3 (amended by SI 1993/221).

6 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 17(1).

7 Ibid reg 17(2).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

42-45 Records to be kept by Insolvency Practitioners

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(4) RECORDS TO BE KEPT BY INSOLVENCY PRACTITIONERS/43. Inspection of records.

43. Inspection of records.

The records to be maintained by insolvency practitioners¹ must be produced by the insolvency practitioner to the authorising body² or any duly appointed representative of such a body on the giving by the body or its representative of reasonable notice to the practitioner³.

The records maintained by any insolvency practitioner authorised by virtue of membership of a recognised professional body⁴ must be produced by that practitioner to the Secretary of State on the giving by the Secretary of State of reasonable notice to the practitioner⁵.

Where the records are maintained in a non-documentary form, the references above to their production include references to producing a copy of the records in legible form⁶.

1 See para 42 ante. For the meaning of 'insolvency practitioner' see para 17 note 7 ante.

2 For the meaning of 'authorising body' see para 22 note 2 ante.

3 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 18(1).

4 I.e. a body recognised under the Insolvency Act 1986 s 391: see para 14 ante.

5 Insolvency Practitioners Regulations 1990, SI 1990/439, reg 18(2). As to the Secretary of State see para 11 note 10 ante.

6 Ibid reg 18(3).

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

42-45 Records to be kept by Insolvency Practitioners

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(4) RECORDS TO BE KEPT BY INSOLVENCY PRACTITIONERS/44. Notification of place where records are maintained.

44. Notification of place where records are maintained.

The insolvency practitioner¹ must notify the authorising body² of the place where the records required to be maintained³ are so maintained and the place, if different, where and the manner in which they are to be produced⁴.

1 For the meaning of 'insolvency practitioner' see para 17 note 7 ante.

2 For the meaning of 'authorising body' see para 22 note 2 ante.

3 Ie under the Insolvency Practitioners Regulations 1990, SI 1990/439, Pt IV (regs 16-20): see paras 42, 43 ante, 45 post.

4 Ibid reg 19. The text refers to production pursuant to reg 18: see para 43 ante.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

42-45 Records to be kept by Insolvency Practitioners

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/2. INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION/(4) RECORDS TO BE KEPT BY INSOLVENCY PRACTITIONERS/45. Preservation of records.

45. Preservation of records.

The insolvency practitioner¹ must preserve every record required to be maintained² for a period of ten years from the date on which the practitioner is granted his release or discharge in respect of that estate or the date on which any security or caution maintained in respect of that estate expired or otherwise ceased to have effect³, whichever is the later⁴.

1 For the meaning of 'insolvency practitioner' see para 17 note 7 ante.

2 Ie under the Insolvency Practitioners Regulations 1990, SI 1990/439, Pt IV (regs 16-20): see the text to note 4 infra; and paras 42-44 ante.

3 As to requirements to maintain security or caution see para 20 ante.

4 See the Insolvency Practitioners Regulations 1990, SI 1990/439, reg 20.

UPDATE

8-45 Insolvency Practitioners and their Qualification

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

42-45 Records to be kept by Insolvency Practitioners

SI 1990/439 (as amended) replaced by the Insolvency Practitioner Regulations 2005, SI 2005/524 (amended by SI 2007/3224, SI 2009/2748, SI 2009/3081).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/(1) INTRODUCTION AND SCOPE/46. Introduction.

3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS

(1) INTRODUCTION AND SCOPE

46. Introduction.

The European Regulation on Insolvency Proceedings¹ governs, between member states of the European Union (except Denmark)², matters of jurisdiction in relation to opening cross-border insolvency proceedings and judgments arising therefrom, and the recognition and enforcement of such judgments³. It also harmonises, to the extent that it applies, the law applicable to insolvency proceedings in member states⁴, replacing (within its scope) the national rules of private international law. However, it does not provide uniform rules for the grounds on which insolvency proceedings may be opened in the individual member states; nor does it seek to harmonise or affect national insolvency rules and procedures, which continue to apply⁵.

1 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. The Regulation applies only to insolvency proceedings opened after its entry into force (ie 31 May 2002: art 47) so that acts done by a debtor before this date continue to be governed by the law which was applicable to them at the time they were done: art 43.

After its entry into force, the European Regulation on Insolvency Proceedings replaced various bilateral agreements that previously applied in the relations between member states: see further art 44 paras 1-2. It also supplanted the European Union Convention on Insolvency Proceedings of November 23 1995 (see *Seventh Report of the Select Committee on The European Communities Convention on Insolvency Proceedings* (HL Paper (1995-96) no 59) p 18), which was not signed by the United Kingdom and, consequently, did not come into force anywhere in the European Union.

The European Regulation on Insolvency Proceedings does not apply: (1) in any member state, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that state with one or more third countries before the entry into force of the Regulation; and (2) in the United Kingdom, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding up of insolvent companies from any arrangements with the Commonwealth existing at the time the Regulation enters into force: art 44 para 3. For the meaning of 'United Kingdom' see para 12 note 2 ante. As to the Commonwealth see COMMONWEALTH.

2 Denmark is not bound by or subject to the European Regulation on Insolvency Proceedings: Recital 33. In relation to the Regulation, the term 'member state' must be construed accordingly.

3 See *ibid* Recital 6. The simplification of formalities achieved by the Regulation is considered necessary to the proper functioning of the internal market and the objective comes within the scope of judicial co-operation in civil matters within the meaning of the EC Treaty (ie the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179)) art 65 (formerly art 73m; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ): see the European Regulation on Insolvency Proceedings Recital 2. The EC Treaty arts 61(c) and 67(1) are cited as providing a legal basis for the European Regulation on Insolvency Proceedings: see the Preamble. Insolvency proceedings relating to bankruptcy, the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; EC 46 (1976); Cmnd 7395) ('the Brussels Convention'): see the European Regulation on Insolvency Proceedings Recital 7; and the Brussels Convention art 1 para 2. These matters are also excluded from EC Council Regulation 44/2001 (OJ L12, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters ('the 'Brussels I' Regulation') and the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988) (OJ L319, 25.11.88, p 9) ('the Lugano Convention'): see the 'Brussels I' Regulation art 1 para 2; and the Lugano Convention art 1 para 2. As to the 'Brussels I' Regulation and the Brussels and Lugano Conventions generally see CONFLICT OF LAWS vol 8(3) (Reissue) para 65. As to the exclusions which operate under those Conventions see CONFLICT OF LAWS vol 8(3) (Reissue) para 74.

Under the European Regulation on Insolvency Proceedings, references may be made to the European Court in accordance with the EC Treaty art 234.

4 See the European Regulation on Insolvency Proceedings Recital 23. In doing so, the Regulation provides conflict of law rules which, to the extent that the Regulation applies, fill the gap left by exclusions from the Convention on the Law applicable to Contractual Obligations (Rome, 19 June 1980; Cmnd 8449) ('the Rome Convention'). As to questions governed by the law of companies and other bodies corporate or unincorporate which are excluded under the Rome Convention see art 1 para 2(e); and CONFLICT OF LAWS vol 8(3) (Reissue) para 350.

5 As to the national rules that apply to English proceedings see CONFLICT OF LAWS vol 8(3) (Reissue) para 500.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/(1) INTRODUCTION AND SCOPE/47. Scope of the Regulation.

47. Scope of the Regulation.

The European Regulation on Insolvency Proceedings¹ applies to collective insolvency proceedings² which entail the partial or total divestment³ of a debtor⁴ and the appointment of a liquidator⁵. However, it applies only to proceedings where the centre of the debtor's main interests is located in a member state⁶. The Regulation gives jurisdiction to the courts of a member state to open insolvency proceedings in relation to a corporate debtor incorporated outside the European Union, if the centre of the debtor's main interests is in that member state⁷. The Regulation does not apply where insolvency proceedings involve insurance undertakings, credit institutions and investment undertakings holding funds or securities for third parties and collective investment undertakings⁸.

1 The EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 All references in the European Regulation on Insolvency Proceedings to 'insolvency proceedings' are references to the collective proceedings referred to here: art 2 para (a). The term includes, in the case of the United Kingdom, company voluntary arrangements (see the Insolvency Act 1986 Pt I (ss 1-7B) (as amended); and para 71 et seq post); administration orders (see Pt II (ss 8-27) (as amended); and para 145 et seq post); creditors' voluntary winding up subject to confirmation by the court (see Pt IV Ch IV (ss 97-106) (as amended) (see para 945 et seq post); winding up by the court (see Pt IV Ch VI) (ss 117-162) (as amended) (see para 438 et seq post); and Pt V (ss 220-229) (as amended) (see para 1147 et seq post)); and bankruptcy (see Pt IX (ss 264-371) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY): European Regulation on Insolvency Proceedings Annex A. In the case of the United Kingdom, the term does not include administrative receivership (see para 380 et seq post; and CONFLICT OF LAWS vol 8(3) (Reissue) para 509) or winding up orders that are made on just or equitable grounds (see para 448 et seq post; and CONFLICT OF LAWS vol 8(3) (Reissue) para 505). In the case of voluntary winding up proceedings, confirmation by a court is a prerequisite for recognition in other member states under the Regulation. As to confirmation by the court of a creditors' voluntary winding up see the Insolvency Rules 1986, SI 1986/1925, rr 7.62 (as added and amended), 7.63 (as added). For the meaning of 'United Kingdom' see para 12 note 2 ante. As to the meaning of 'member state' see para 46 note 2 ante.

3 The European Regulation on Insolvency Proceedings does not define either 'partial divestment' or 'total divestment'.

4 The European Regulation on Insolvency Proceedings applies to insolvency proceedings whether the debtor is a natural person or a legal person, a trader or an individual: Recital 9. This is to say that the Regulation applies to individual cross-border insolvency proceedings (bankruptcy) as well as to corporate cross-border insolvency proceedings.

5 Ibid art 1 para 1. The relevant proceedings (comprising acts and formalities set down in law) must comply with the provisions of this Regulation and be officially recognised and legally effective in the member state in which the insolvency proceedings are opened: Recital 10.

'Liquidator' means any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs: art 2 para (b). Those persons and bodies include, in the case of the United Kingdom, a liquidator, a supervisor of a voluntary arrangement, an administrator, an official receiver, a trustee and a judicial factor: Annex C. As to the powers and duties of the liquidator see para 56 post.

6 Ibid Recital 14. The member states' different national laws apply where the European Regulation on Insolvency Proceedings does not. The 'centre of main interests' is not defined in the Regulation but it corresponds to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties: Recital 13; and see *Geveran Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567, [2003] 1 All ER 1, [2003] 1 WLR 912; *Re Eurofood IFSC Ltd* [2004] BCC 383.

7 *Re BRAC Rent-A-Car International Inc* [2003] EWHC 128 (Ch), [2003] 2 All ER 201, [2003] 1 WLR 1421. See also *Re Salvage Association* [2003] EWHC 1028 (Ch), [2003] 3 All ER 246, [2004] 1 WLR 174 (where it was held that there was jurisdiction to make an administration order in respect of an association incorporated by royal charter with its centre of main interest in the United Kingdom); *Re Daisytek-ISA Ltd* [2003] All ER (D) 312 (Jul), [2003] BCC 562 (where the court made administration orders in respect of German companies and a French company where it was shown that the companies' centre of main interests was the head office of the English holding company).

8 European Regulation on Insolvency Proceedings art 1 para 2. These undertakings are not covered by the Regulation because they are subject to special arrangements, and the national supervisory authorities have extremely wide-ranging powers of intervention: Recital 9. See EC Council Directive 98/26 (OJ L166, 11.06.98, p 45) on settlement finality in payment and securities settlement systems (see also paras 7 ante, 64 note 2 post); EC Council Directive 2001/17 (OJ L110, 20.04.2001, p 28) on the reorganisation and winding up of insurance undertakings; and EC Council Directive 2001/24 (OJ L125, 05.05.2001, p 15) on the reorganisation and winding up of credit institutions. As to the meaning of 'insurance undertaking' see EC Council Directive 73/239 (OJ L228, 16.8.73, p 3) and EC Council Directive 79/267 (OJ L63, 13.3.79, p 1). As to the meaning of 'credit institution' see EC Council Directive 2000/12 (OJ L126, 26.05.2000, p 1) relating to the taking up and pursuit of the business of credit institutions. As to the meaning of 'investment undertaking' see EC Council Directive 93/22 (OJ L141, 11.6.93, p 27). A 'collective investment undertaking' is subject to EC Council Directive 85/611 (OJ L375, 31.12.85, p 3).

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

47 Scope of the Regulation

NOTES 2, 5--EC Council Regulation 1346/2000 Annexes A, C replaced: EC Council Regulation 788/2008 (OJ L213, 8.8.2008, p 1).

NOTES 6, 7--See also *Re Dollar Land (Manhattan) Ltd* [2005] All ER (D) 35 (Nov).

NOTE 8--Directive 85/611 replaced with effect from 1 July 2011: European Parliament and EC Council Directive 2009/65 (OJ L302, 17.11.2009, p 32). Directive 98/26 amended: European Parliament and EC Council Directive 2009/44 (OJ L146, 10.6.2009, p 37). Directive 2000/12 replaced: European Parliament and EC Council Directive 2006/48 (OJ L177, 30.6.2006, p 1) (as amended). For the meaning of 'credit institution' see now Directive 2006/48 art 1(1).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (2) JURISDICTION/48. The opening of proceedings.

(2) JURISDICTION

48. The opening of proceedings.

The European Regulation on Insolvency Proceedings¹ establishes international jurisdiction by providing that insolvency proceedings² may be opened only in the courts³ of the member state where the centre of a debtor's main interests is situated⁴. In the case of companies and legal persons there is a rebuttable presumption that the centre of a debtor's main interests is the place of the registered office⁵. These proceedings are known as 'main proceedings' because they have universal scope and aim at encompassing all the debtor's assets⁶.

In order to protect the diversity of interests, the Regulation permits secondary proceedings to be opened, to run in parallel with the main proceedings⁷. Secondary proceedings may be opened either by the liquidator or by any other person empowered by the courts of another member state⁸ where the debtor has an establishment⁹. However, the jurisdiction in secondary proceedings is limited to those assets of the debtor which are situated in the member state where such proceedings are taking place¹⁰.

1 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 For the meaning of 'insolvency proceedings' see para 47 note 2 ante.

3 'Court' means the judicial body or any other competent body of a member state empowered by national law to open insolvency proceedings or to take decisions in the course of such proceedings: European Regulation on Insolvency Proceedings art 2 para (d). The expression should be given a broad meaning because the proceedings do not necessarily involve the intervention of a judicial authority: Recital 10. As to the meaning of 'member state' see para 46 note 2 ante.

4 Ibid art 3 para 1. As to the centre of a debtor's main interests see para 47 notes 6-7 ante.

5 Ibid art 3 para 1.

6 Ibid Recital 12. In English proceedings, any application made under the Insolvency Act 1986 must state whether the European Regulation on Insolvency Proceedings applies and, if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings: see the Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(q) (as amended) (company voluntary arrangements: see para 109 post), r 2.4(4) (as substituted) (administration: see para 148 post) and r 7.62 (as added and amended) (creditors' voluntary winding up subject to confirmation by the court). As to secondary proceedings see the text and note 7 infra. As to territorial proceedings see para 49 post. Provision for the Regulation is made also in the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) (see para 1166 et seq post) and in the Limited Liability Partnerships Regulations 2001, SI 2001/1090 (as amended) (see para 1302 et seq post).

7 European Regulation on Insolvency Proceedings Recital 12. As to the opening of secondary proceedings see para 50 post. The Regulation acknowledges that it is not practical to introduce a regime with universal scope because it establishes primacy of the law of the state of opening of proceedings against a background of widely differing substantive laws and different preferential rights enjoyed by some creditors in insolvency proceedings; and, by allowing national proceedings which cover only assets situated in the state of opening to run concurrently with main insolvency proceedings which have universal scope, the Regulation seeks to accommodate this diversity: see Recital 11.

8 Ie a member state other than that where the centre of the debtor's main interests is situated: see para 50 et seq post.

9 European Regulation on Insolvency Proceedings art 3 para 2. 'Establishment' is defined as 'any place of operations where the debtor carries out a non-transitory economic activity with human means and goods': art 2 para (h). The words 'non-transitory' and 'human means and goods' are not defined.

It seems that when corporate groups are organised through locally-registered subsidiaries, the requirements of art 3 para 1 would be satisfied more easily than the requirements of art 3 para 2 (ie proceedings would have to be conducted against each as main proceedings rather than as secondary proceedings). See further *Re BRAC Rent-A-Car International Inc* [2003] EWHC 128 (Ch), [2003] 2 All ER 201, [2003] 1 WLR 1421; *Re Daisytek-ISA Ltd* [2003] All ER (D) 312 (Jul), [2003] BCC 562.

10 European Regulation on Insolvency Proceedings art 3 para 2. The 'member state in which assets are situated' means: (1) in the case of tangible property, the member state within the territory of which the property is situated; (2) in the case of property and rights ownership of or entitlement to which must be entered in a public register, the member state under the authority of which the register is kept; and (3) in the case of claims, the member state within the territory of which the third party required to meet them has the centre of his main interests, as determined in the main proceedings: art 2 para (g).

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (2) JURISDICTION/49. Co-ordination of proceedings.

49. Co-ordination of proceedings.

The European Regulation on Insolvency Proceedings¹ provides rules to ensure that the main proceedings² and any secondary proceedings³ are co-ordinated⁴. Where main proceedings have been opened⁵, any proceedings opened subsequently⁶ must be secondary proceedings, and are limited to winding-up proceedings⁷.

It is possible for secondary proceedings to be opened prior to the opening of the main proceedings, but only where: (1) main proceedings cannot be opened because of the conditions laid down by the law of the member state where the centre of the debtor's main interest is situated; or (2) the opening of proceedings is requested by a local creditor⁸, or one whose claim arises from the operation of the local establishment⁹. In these cases, the proceedings are known as 'territorial proceedings' and jurisdiction for them must be established by the national law of the member state concerned¹⁰. Once main proceedings are opened, 'territorial proceedings' become 'secondary proceedings' and the court with jurisdiction in territorial proceedings may, at the instance of the liquidator in the main proceedings, convert the proceedings to winding-up proceedings, if this is in the interests of the creditors in the main proceedings¹¹. The liquidator in the main proceedings may also request the court which has opened secondary proceedings to stay the liquidation process¹².

1 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 For the meaning of 'main proceedings' see para 48 ante.

3 For the meaning of 'secondary proceedings' see para 48 ante.

4 European Regulation on Insolvency Proceedings Recital 12. As to the role played by liquidators in co-ordinating proceedings see para 57 post.

5 Ie as described in para 48 ante. As to the time when proceedings have been opened see *Re Eurofood IFSC Ltd* [2004] BCC 383.

6 Ie as described in para 48 ante.

7 European Regulation on Insolvency Proceedings art 3 para 3. 'Winding-up proceedings' means insolvency proceedings involving realising the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by reason of the insufficiency of the assets: art 2 para (c). In the case of the United Kingdom, this includes: (1) winding up by or subject to the supervision of the court; (2) creditors' voluntary winding up (with confirmation by the court); and (3) bankruptcy (or, in Scotland, sequestration): see Annex B. For the meaning of 'United Kingdom' see para 12 note 2 ante.

8 Ie a creditor whose domicile, habitual residence or registered office is in the member state where the establishment is situated.

9 European Regulation on Insolvency Proceedings art 3 para 4. This restriction is intended to limit to what is absolutely necessary those cases where territorial insolvency proceedings are requested before the main insolvency proceedings: Recital 17. As to the meaning of 'member state' see para 46 note 2 ante.

10 Ibid Recital 15.

11 Ibid art 37. As to applications made to the English court by a liquidator appointed in another member state for conversion of insolvency proceedings see the Insolvency Rules 1986, SI 1986/1925, Pt 1 Ch 7 (rr 1.31-1.33) (as added) (company voluntary arrangements: see para 142 post); Pt 2 Ch 14 (rr 2.130-2.132) (as

substituted) (administration: see para 372 post); and Pt 7 Ch 10 (rr 7.62-7.63) (as added and amended) (creditors' voluntary winding up subject to confirmation by the court).

12 See para 51 post.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

49 Co-ordination of proceedings

NOTE 7--EC Council Regulation 1346/2000 Annex B replaced: EC Council Regulation 788/2008 (OJ L213, 8.8.2008, p 1).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/(3) SECONDARY INSOLVENCY PROCEEDINGS/50. Opening of secondary proceedings.

(3) SECONDARY INSOLVENCY PROCEEDINGS

50. Opening of secondary proceedings.

The opening of main proceedings¹ by a court of a member state does not prevent the opening of secondary insolvency proceedings² in another member state where the debtor has an establishment and where the main proceedings are recognised³. The opening of secondary proceedings may be requested either by the liquidator in the main proceedings or by any other person or authority which is empowered by the law applicable to request the opening of secondary insolvency proceedings within the territory of that member state⁴.

Where the main proceedings are opened subsequent to the opening of secondary proceedings in another member state, the provisions relating to secondary proceedings⁵ apply to those opened first, in so far as the progress of those proceedings so permits⁶.

In any case, the secondary proceedings must be restricted to winding up proceedings⁷; they may not examine the debtor's insolvency which is being examined in the main proceedings; and they are limited in their effect to the assets of the debtor situated within the territory where the secondary proceedings are being held⁸.

Except as otherwise provided for⁹, the law applicable to secondary proceedings is that of the member state within whose territory the secondary proceedings are opened¹⁰.

1 For the meaning of 'main proceedings' see para 48 ante.

2 For the meaning of 'secondary proceedings' see para 48 ante. As to the meaning of 'member state' see para 46 note 2 ante.

3 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 27. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

4 Ibid art 29 paras (a)-(b).

Requests to open secondary insolvency proceedings may be made to serve a purpose besides the protection of local interests: Recital 19. For instance, the liquidator in the main proceedings may request the opening of secondary proceedings when the efficient administration of the estate so requires: Recital 19. Cases may arise where the estate of the debtor is too complex to administer as a unit or where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the state of the opening to the other states where the assets are located: Recital 19.

Where the law of the member state in which the opening of secondary proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security: art 30. As to the meaning of 'member state' see para 46 note 2 ante.

5 See paras 51-54 post.

6 European Regulation on Insolvency Proceedings art 36.

7 For the meaning of 'winding-up proceedings' see para 49 note 7 ante.

8 European Regulation on Insolvency Proceedings art 27.

9 le except where the European Regulation on Insolvency Proceedings provides conflict of laws rules for certain insolvency-related issues: see para 59 et seq post.

10 Ibid art 28.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/(3) SECONDARY INSOLVENCY PROCEEDINGS/51. Stay of liquidation.

51. Stay of liquidation.

The court which opened the secondary proceedings¹ may stay the process of liquidation in whole or in part at the request of the liquidator in the main proceedings², provided that in that event it may require him to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors³. Such a request from the liquidator may be rejected only if it is manifestly of no interest to the creditors in the main proceedings⁴. Such a stay of the process of liquidation may be ordered for up to three months, and may be continued or renewed for similar periods⁵.

The court which opened the secondary proceedings may terminate the stay of the process of liquidation: (1) at the request of the liquidator in the main proceedings; or (2) of its own motion, at the request of a creditor or at the request of the liquidator in the secondary proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main proceedings or in the secondary proceedings⁶.

1 For the meaning of 'secondary proceedings' see para 48 ante.

2 For the meaning of 'main proceedings' see para 48 ante.

3 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 33 para 1. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

4 Ibid art 33 para 1.

5 Ibid art 33 para 1.

6 Ibid art 33 para 2.

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52. Closing of secondary proceedings.

Where the law applicable to secondary proceedings¹ allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the liquidator in the main proceedings² is empowered to propose such a measure himself³. The consent of the liquidator in the main proceedings is also required before the closure of secondary proceedings becomes final, although closure may become final without his agreement if the financial interests of the creditors in the main proceedings are not affected by the measure proposed⁴.

Any restriction of creditors' rights arising from a measure which effects closure which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest⁵.

1 For the meaning of 'secondary proceedings' see para 48 ante.

2 For the meaning of 'main proceedings' see para 48 ante.

3 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 34 para 1. The liquidator is entitled to demand a stay of liquidation of secondary proceedings for this purpose: see para 51 ante. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

4 Ibid art 34 para 1.

5 Ibid art 34 para 2. During a stay of the process of liquidation (as to which see para 51 ante), only the liquidator in the main proceedings or the debtor, with the former's consent, may propose closure of the secondary proceedings, and no other proposal for such a measure can be put to the vote or approved: art 34 para 3.

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53. Provisional and protective measures.

The court having jurisdiction to open the main insolvency proceedings¹ has the power to order provisional and protective measures to secure and preserve any of the debtor's assets from the time of the request to open proceedings up to the judgment opening the proceedings². It may order provisional protective measures in relation to assets situated in the territory of other member states³; and, where it appoints a temporary administrator prior to the opening of the main insolvency proceedings, that administrator is able to apply for any preservation measures which are possible under the law of the member states in which an establishment belonging to the debtor is to be found⁴.

1 For the meaning of 'main proceedings' see para 48 ante.

2 Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings: EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') Recital 16. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

3 Ibid Recital 16. As to the meaning of 'member state' see para 46 note 2 ante.

4 Ibid art 38. In English proceedings, a member state liquidator or a temporary liquidator may apply for the appointment of a provisional liquidator (of a company) or an interim receiver (of an individual) under the Insolvency Rules 1986, SI 1986/1925, rr 4.25, 6.51 (as amended) and the Insolvency Act 1986 s 135 (see para 491 post) and s 286 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 223).

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46-70 European Regulation on Insolvency Proceedings

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54. Provision of information for creditors; lodgement of claims.

Any creditor may lodge his claim in the main proceedings and in any secondary proceedings¹.

Foreign creditors², including the tax and social security authorities of member states, have the right to lodge claims in writing in each of the insolvency proceedings relating to the debtor's asset which are pending in the European Union³. As soon as insolvency proceedings are opened in a member state⁴, the court of the state having jurisdiction, or the liquidator appointed by it, must inform creditors by means of an individual notice, which must include inter alia particulars of time limits, the penalties laid down in regard to those time limits, and the body or authority empowered to accept the lodgement of claims⁵. The notice must indicate also whether creditors whose claims are preferential or secured in rem need lodge their claims⁶.

For his part, a creditor must send copies of supporting documents, if any, and indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in rem or a reservation of title in respect of the claim and what assets are covered by the guarantee he is invoking⁷.

In order to ensure equal treatment of creditors, the distribution of proceeds is also co-ordinated⁸. A creditor who, after the opening of main proceedings, obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another member state, must return what he has obtained to the liquidator, subject to the provisions regarding third parties' rights in rem and reservation as to title⁹. Every creditor is able to keep any dividend on his claim that he has received in the course of insolvency proceedings but is entitled to share in the distribution of total assets made in other proceedings only where creditors with the same standing have obtained the same proportion of their claims in those other proceedings¹⁰.

1 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 32 para 1. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 I.e. any creditor who has his habitual residence, domicile or registered office in a member state other than the state of the opening of proceedings: *ibid* art 39. As to the meaning of 'member state' see para 46 note 2 ante.

3 *Ibid* art 39. See also Recital 21. This provision derogates from the application of national law, pursuant to art 4 para 2(h) (see para 58 post) and means that claims cannot be disallowed on the grounds that the creditor is situated abroad or that the claim is governed by foreign public law, including foreign penal or revenue claims.

4 *Ibid* art 40 para 1.

5 *Ibid* art 40 para 2.

6 *Ibid* art 40 para 2.

7 *Ibid* art 41.

8 *Ibid* Recital 21.

9 *Ibid* art 20 para 1.

10 *Ibid* art 20 para 2.

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(4) THE LIQUIDATOR

55. Evidencing and publicising the appointment of a liquidator.

A liquidator's appointment is evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the court which has jurisdiction¹. No legalisation or other similar formality is necessary, although a translation into the official language (or one of the official languages) of the member state within whose territory he intends to act will be appropriate in certain circumstances².

The liquidator may request that notice of the judgment opening insolvency proceedings and (where appropriate) the decision appointing him be published in any other member state in accordance with the publication procedures provided for in that state³. The publication must specify the liquidator appointed and whether the jurisdiction rule applied relates to main proceedings or secondary proceedings⁴. If there is an establishment⁵ of the debtor in any member state, publication may be mandatory there and, in such cases, the liquidator or any authority empowered to that effect in the member state where the main proceedings are opened must take all necessary measures to ensure such publication⁶.

The liquidator may request also that the judgment opening the main proceedings is registered in the land register, the trade register and any other public register kept in the other member states⁷. However, any member state may require mandatory registration and, in such cases, the liquidator or any authority empowered to that effect in the member state where the main proceedings have been opened must take all necessary measures to ensure such registration⁸.

The costs of the publication and registration are regarded as costs and expenses incurred in the proceedings⁹.

Where an obligation has been honoured in a member state for the benefit of a debtor who is subject to insolvency proceedings opened in another member state, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation is deemed to have discharged it if he was unaware of the opening of proceedings¹⁰. Where such an obligation is honoured before the publication requested by the liquidator has been effected, the person honouring the obligation is presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; conversely, where the obligation is honoured after such publication has been effected, the person honouring the obligation is rebuttably presumed to have been aware of the opening of proceedings¹¹.

1 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 19. As to the duties and powers of the liquidator see para 56 post. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 Ibid art 19. As to the meaning of 'member state' see para 46 note 2 ante.

3 Ibid art 21 para 1. For simple business reasons, publication should take place in other member states where assets of the debtor may be located.

4 Ibid art 21 para 1.

5 For the meaning of 'establishment' see para 48 note 9 ante.

6 European Regulation on Insolvency Proceedings art 21 para 2. However, publication is not a prior condition for the recognition of foreign proceedings in any case: Recital 29.

7 Ibid art 22 para 1.

8 Ibid art 22 para 2.

9 Ibid art 23.

10 Ibid art 24 para 1. This provision protects the position of persons who have an interest in the insolvency proceedings but who are not in fact aware that such proceedings have been opened and act in good faith in a way that conflicts with those proceedings: Recital 30. Where such persons make a payment to the debtor when they should in fact have made the payment to the foreign liquidator, the payment has a debt-discharging effect: Recital 30.

11 Ibid art 24 para 2.

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56. The liquidator's duties and powers.

A liquidator appointed by a court with jurisdiction in the main proceedings¹ enjoys in all member states the powers given to him in the state where the main proceedings are opened, so long as no other insolvency proceedings have been opened in the other member states and so long as no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in those states². The liquidator may in particular remove the debtor's assets from the territory of any member state in which they are situated, subject to the provisions regarding third parties' rights in rem³ and reservation as to title⁴.

A liquidator appointed by a court with jurisdiction in territorial or secondary proceedings⁵ may recover from other member states (either through the courts or out of court) movable property which has been removed there subsequent to the opening of the insolvency proceedings⁶. He may also bring any action to set aside which is in the interests of the creditors⁷.

In exercising his powers, which do not include coercive measures or the right to rule on legal proceedings or disputes, the liquidator must comply with the law of the member state within whose territory he intends to take action, in particular with regard to procedures for the realisation of assets⁸.

1 As to the evidencing and publicising of the appointment of a liquidator see para 55 ante.

2 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 18 para 1. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

3 As to third parties' rights in rem see para 60 post.

4 European Regulation on Insolvency Proceedings art 18 para 1. As to reservation as to title see para 62 post.

5 As to secondary or territorial proceedings see paras 48-49 ante.

6 European Regulation on Insolvency Proceedings art 18 para 2. One of the stated aims of the Regulation is to avoid incentives for the parties to transfer assets or judicial proceedings from one member state to another, seeking to obtain a more favourable legal position (known as 'forum shopping'); Recital 4.

7 Ibid art 18 para 2.

8 Ibid art 18 para 3.

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57. The liquidators' role in co-ordinating proceedings.

Liquidators in concurrent proceedings play an important role in realising the total assets of a debtor by ensuring that proceedings within and between member states are co-ordinated¹. To this end, the liquidator in the main proceedings and the liquidators in any concurrent secondary proceedings are duty bound to co-operate with each other² and to communicate information to each other³. They must immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings⁴.

Furthermore, in order to ensure the dominant role of the main insolvency proceedings, the liquidator in such proceedings is given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time⁵. The liquidator in the secondary proceedings must give the liquidator in the main proceedings an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings⁶.

The liquidators in the main and any secondary proceedings must lodge claims in other proceedings which have already been lodged in their proceedings, provided that the interests of creditors in the latter proceedings are served thereby, and subject to the right of creditors to oppose this or to withdraw the lodgement of their claims where the law applicable so provides⁷. The liquidator in the main or secondary proceedings may also participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings⁸.

If, by the liquidation of assets in the secondary proceedings, it is possible to meet all claims allowed under those proceedings, the liquidator appointed in those proceedings must immediately transfer any assets remaining to the liquidator in the main proceedings⁹.

1 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') Recital 20. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

2 Ibid art 31 para 2.

3 Ibid art 31 para 1. This duty is said to be 'subject to the rules restricting the communication of information'. The Regulation itself does not contain any such restrictions so this may refer simply to general rules of confidentiality between liquidators. Without prejudice to the generality of the obligations imposed by art 31, where a member state liquidator has been appointed in proceedings and the supervisor, administrator or liquidator is obliged to give notice, or provide a copy of a document (including an order of court), to the court, the registrar of companies or the official receiver, the supervisor, administrator or liquidator must give notice or provide copies, as appropriate, to the member state liquidator also: see the Insolvency Rules 1986, 1986/1925, r 1.34 (as added) (company voluntary arrangements: see para 143 post); r 2.133 (as added and substituted) (administration: see para 372 post); r 4.231 (as added and amended) (winding up); and r 7.63 (as added) (creditors' voluntary winding up subject to confirmation by the court). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 European Regulation on Insolvency Proceedings art 31 para 1. The provisions appear to regulate the bilateral communication of information between the liquidator in the main proceedings and liquidators appointed in secondary proceedings but there seems to be no explicit duty to provide information amongst different liquidators of the secondary proceedings themselves.

5 Ibid Recital 20.

6 Ibid art 31 para 3. For example, he should be able to propose a restructuring plan or composition or apply for realisation of the assets in the secondary insolvency proceedings to be suspended: Recital 20.

7 Ibid art 32 para 2.

8 Ibid art 32 para 3. Without prejudice to the generality of the right to participate referred to in art 32 para 3, the member state liquidator is deemed to be a creditor for various purposes (such as entitlement to vote) under the Insolvency Rules 1986, 1986/1925 (as amended): see r 1.34 (as added) (company voluntary arrangements: see para 143 post), r 2.133 (as added and substituted) (administration: see para 372 post); r 4.231 (as added and amended) (company voluntary arrangements); and r 7.64 (as added) (rights to inspect court file and of attendance in insolvency proceedings).

9 European Regulation on Insolvency Proceedings art 35.

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57 The liquidators' role in co-ordinating proceedings

NOTE 8--SI 1986/1925 r 7.64 amended: SI 2009/642.

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(5) THE LAW APPLICABLE

(i) In general

58. Law applicable.

Subject to the other provisions of the European Regulation on Insolvency Proceedings¹, the law applicable to insolvency proceedings is that of the member state within whose territory such proceedings are opened and that law determines all the effects of the insolvency proceedings both procedural and substantive on the persons and legal relations concerned². The law of the state in which proceedings are opened determines the conditions for the opening of those proceedings, their conduct and their closure, in particular³:

- 82 (1) against which debtors insolvency proceedings may be brought on account of their capacity⁴;
- 83 (2) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings⁵;
- 84 (3) the respective powers of the debtor and the liquidator⁶;
- 85 (4) the conditions under which set-offs may be invoked⁷;
- 86 (5) the effects of insolvency proceedings on current contracts to which the debtor is party⁸;
- 87 (6) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending⁹;
- 88 (7) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings¹⁰;
- 89 (8) the rules governing the lodging, verification and admission of claims¹¹;
- 90 (9) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off¹²;
- 91 (10) the conditions for and the effects of closure of insolvency proceedings, in particular by composition¹³;
- 92 (11) creditors' rights after the closure of insolvency proceedings¹⁴;
- 93 (12) who is to bear the costs and expenses incurred in the insolvency proceedings¹⁵;
- 94 (13) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors¹⁶.

1 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 Ibid art 4 para 1. As to exceptions to this rule see para 59 et seq post. As to the meaning of 'member state' see para 46 note 2 ante.

3 Ibid art 4 para 2.

4 Ibid art 4 para 2(a).

5 Ibid art 4 para 2(b). 'Time of the opening of proceedings' means the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not: art 2 para (f).

6 Ibid art 4 para 2(c).

7 Ibid art 4 para 2(d).

8 Ibid art 4 para 2(e).

9 Ibid art 4 para 2(f).

10 Ibid art 4 para 2(g).

11 Ibid art 4 para 2(h).

12 Ibid art 4 para 2(i).

13 Ibid art 4 para 2(j).

14 Ibid art 4 para 2(k).

15 Ibid art 4 para 2(l).

16 Ibid art 4 para 2(m). This provision does not apply where the person who has benefited from an act detrimental to all the creditors provides proof that: (1) the act is subject to the law of a member state other than that of the state of the opening of proceedings; and (2) that law does not allow any means of challenging that act in the relevant case: art 13.

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(ii) The Law applicable to certain Issues

59. In general.

The European Regulation on Insolvency Proceedings¹ provides conflict of laws rules which replace, within their scope of application², national rules of private international law on insolvency-related issues³. They apply both to main proceedings and local proceedings⁴, and address the following cross-border issues⁵: third party security rights⁶; set-off of claims⁷; reservation of title⁸; contracts relating to immovable property⁹; payment systems and financial markets¹⁰; contracts relating to employment¹¹; rights subject to registration¹²; Community patents and trade marks¹³; actions to set aside transactions which took place before the opening of insolvency proceedings¹⁴; protection of third parties to whom the debtor has disposed of specified forms of property after the opening of insolvency proceedings¹⁵; and pending lawsuits¹⁶.

1 le EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 As to the scope of the European Regulation on Insolvency Proceedings see para 47 ante.

3 European Regulation on Insolvency Proceedings Recital 23.

4 Ibid Recital 23.

5 The European Regulation on Insolvency Proceedings makes provision for special rules on applicable law in the case of particularly significant rights and legal relationships because it exists against a background of widely differing substantive laws (eg relating to security interests) and different preferential rights enjoyed by some creditors in insolvency proceedings in the European Community: Recital 11. There is a risk that the automatic recognition of insolvency proceedings to which the law of the opening state normally applies may interfere with the rules under which transactions are carried out in other member states: Recital 24. As to the meaning of 'member state' see para 46 note 2 ante.

6 See *ibid* art 5; and para 60 post.

7 See *ibid* art 6; and para 61 post.

8 See *ibid* art 7; and para 62 post.

9 See *ibid* art 8; and para 63 post.

10 See *ibid* art 9; and para 64 post.

11 See *ibid* art 10; and para 65 post.

12 See *ibid* art 11; and para 66 post.

13 See *ibid* art 12; and para 67 post.

14 See *ibid* art 13; and para 58 post.

15 See *ibid* art 14; and para 68 post.

16 See *ibid* art 15; and para 69 post.

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60. Creditors' and third parties' rights in rem.

The opening of insolvency proceedings in one member state¹ does not affect the rights in rem² of creditors or third parties in respect of tangible or intangible, movable or immovable assets³ belonging to the debtor which are situated within the territory of another member state at the time of the opening of proceedings⁴. The rights affected in particular are:

- 95 (1) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage⁵;
- 96 (2) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee⁶;
- 97 (3) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled⁷;
- 98 (4) a right in rem to the beneficial use of assets⁸.

1 As to the opening of insolvency proceedings see para 48 ante. As to the meaning of 'member state' see para 46 note 2 ante.

2 The right, recorded in a public register and enforceable against third parties, under which a right in rem may be obtained, is considered a right in rem for these purposes: EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 5 para 3. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

3 This includes both specific assets and collections of indefinite assets as a whole which change from time to time: *ibid* art 5 para 1.

4 *Ibid* art 5 para 1. This does not preclude actions for voidness, voidability or unenforceability (as to which see para 58 ante): art 5 para 4. For the meaning of 'time of the opening of proceedings' see para 58 note 5 ante.

There is a particular need for a special reference that diverges from the law of the member state where proceedings have been opened in the case of rights in rem, since these are of considerable importance for the granting of credit: Recital 25. The basis, validity and extent of such a right in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings: Recital 25. The proprietor of the right in rem should therefore be able to continue to assert his right to segregation or separate settlement of the collateral security: Recital 25. Where assets are subject to rights in rem under the *lex situs* in one member state but the main proceedings are being carried on in another member state, the liquidator in the main proceedings should be able to request the opening of secondary proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there: Recital 25. If a secondary proceeding is not opened, the surplus on sale of the asset covered by rights in rem must be paid to the liquidator in the main proceedings: Recital 25.

See also the Insolvency Rules 1986, SI 1986/1925, r 4.96(3) (as added) (see para 800 post).

5 European Regulation on Insolvency Proceedings art 5 para 2(a).

6 *Ibid* art 5 para 2(b).

7 *Ibid* art 5 para 2(c).

8 *Ibid* art 5 para 2(d).

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/61. Creditors' right to set-off.

61. Creditors' right to set-off.

The opening of insolvency proceedings does not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim¹.

¹ EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 6 para 1. This does not preclude actions for voidness, voidability or unenforceability (as to which see para 58 ante); art 6 para 2. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

If a set-off is not permitted under the law of the member state where proceedings have been opened, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off will acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises: Recital 26. As to the meaning of 'member state' see para 46 note 2 ante.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/62. Rights based on reservation of title.

62. Rights based on reservation of title.

The opening of insolvency proceedings against the purchaser of an asset in one member state does not affect the seller's rights based on a reservation of title under the law of another member state where the asset is situated¹.

The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, does not constitute grounds for rescinding or terminating the sale and does not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a member state other than the state of the opening of proceedings².

1 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 7 para 1. This does not preclude actions for voidness, voidability or unenforceability (as to which see para 58 ante): art 7 para 3. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

2 Ibid art 7 para 2. This does not preclude actions for voidness, voidability or unenforceability: art 7 para 3.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/63. Contracts relating to immovable property.

63. Contracts relating to immovable property.

The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property is governed solely by the law of the member state within the territory of which the immovable property is situated¹.

¹ EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 8. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/64. Payment systems and financial markets.

64. Payment systems and financial markets.

Subject to the provisions preserving the rights in rem of third parties¹, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market are governed solely by the law of the member state applicable to that system or market².

¹ See para 60 ante.

² EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 9 para 1. This does not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market: art 9 para 2. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

This provision is thought to be necessary to protect, for example, the position-closing agreements and netting agreements to be found in payment systems and financial markets as well as the sale of securities and the guarantees provided for such transactions as governed in particular by EC Council Directive 98/26 (OJ L166, 11.6.98, p 45) on settlement finality in payment and securities settlement systems: European Regulation on Insolvency Proceedings Recital 27. For such transactions, the only law which is material should be that applicable to the system or market concerned: Recital 27. This provision is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on the regulated financial markets of the member states being altered in the case of insolvency of a business partner: Recital 27. There are special provisions contained in EC Council Directive 98/26 (OJ L166, 11.6.98, p 45), which take precedence over the general rules in the European Regulation on Insolvency Proceedings: Recital 27.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

64 Payment systems and financial markets

NOTE 2--Directive 98/26 amended: European Parliament and EC Council Directive 2009/44 (OJ L146, 10.6.2009, p 37).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/65. Contracts of employment.

65. Contracts of employment.

The effects of insolvency proceedings on employment contracts and relationships are governed solely by the law of the member state applicable to the contract of employment¹.

1 EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 10. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

This provision is intended to protect employees and jobs by specifying that the law applicable according to the general rules on conflict of law must determine the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment: Recital 28. However, any other questions relating to insolvency law, such as whether the employees' claims are protected by preferential rights and what status such preferential rights may have, are determined by the law of the opening state: Recital 28.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/66. Rights subject to registration.

66. Rights subject to registration.

The effects of insolvency proceedings on the rights of the debtor in immovable property, a ship or an aircraft subject to registration in a public register are determined by the law of the member state under the authority of which the register is kept¹.

¹ EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 11. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/67. Community patents and trade marks.

67. Community patents and trade marks.

For the purposes of the European Regulation on Insolvency Proceedings¹, a Community patent, a Community trade mark or any other similar right established by Community law may be considered for inclusion in main proceedings only².

1 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 Ibid art 12. For the meaning of 'main proceedings' see para 48 ante.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/68. Third-party purchasers.

68. Third-party purchasers.

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of: (1) an immovable asset; (2) a ship or an aircraft subject to registration in a public register; or (3) securities whose existence presupposes registration in a register laid down by law, the validity of that act is governed by the law of the state within whose territory the immovable asset is situated or under whose authority the register is kept¹.

¹ EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 14. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (5) THE LAW APPLICABLE/(ii) The Law applicable to certain Issues/69. Effects of insolvency proceedings on lawsuits pending.

69. Effects of insolvency proceedings on lawsuits pending.

The effects of insolvency proceedings on a pending lawsuit concerning an asset or a right of which the debtor has been divested is governed solely by the law of the member state in which that lawsuit is pending¹.

¹ EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 15. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante. As to the meaning of 'member state' see para 46 note 2 ante.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

69 Effects of insolvency proceedings on lawsuits pending

NOTE 1--See *Syska v Vivendi Universal SA* [2009] EWCA Civ 677, [2009] 2 All ER (Comm) 891.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/3. EUROPEAN REGULATION ON INSOLVENCY PROCEEDINGS/ (6) RECOGNITION OF INSOLVENCY PROCEEDINGS/70. Principle and effects of recognition.

(6) RECOGNITION OF INSOLVENCY PROCEEDINGS

70. Principle and effects of recognition.

The European Regulation on Insolvency Proceedings¹, rather than national law, provides for the immediate and mutual recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings².

Unless the Regulation provides otherwise and as long as no secondary proceedings are opened in another member state³, the judgment⁴ opening the main proceedings produces the same effects in any other member state as under the law of the state of the opening of proceedings, with no further formalities being required⁵. The effects of secondary proceedings may not be challenged in other member states⁶.

Any judgment opening insolvency proceedings handed down by a court of a member state which has jurisdiction to open either main or secondary insolvency proceedings must be recognised, from the time it becomes effective in the state of the opening of proceedings, in all other member states⁷.

Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in this way, and which concern the conduct and closure of insolvency proceedings, and compositions approved by that court, must also be recognised with no further formalities⁸. These judgments are to be enforced in accordance with the relevant provisions of the Brussels Convention⁹. However, member states are not obliged to recognise or enforce a judgment which might result in a limitation of personal freedom or postal secrecy¹⁰. Nor are they obliged to recognise insolvency proceedings opened in another member state or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that state's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual¹¹.

1 le EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 note 1 ante.

2 See *ibid* Recital 22.

3 As to the meaning of 'member state' see para 46 note 2 ante.

4 'Judgment' in relation to the opening of insolvency proceedings or the appointment of a liquidator includes the decision of any court empowered to open such proceedings or to appoint a liquidator: European Regulation on Insolvency Proceedings art 2 para (e).

5 *Ibid* art 17 para 1.

6 *Ibid* art 17 para 2. Any restriction of the creditors' rights, in particular a stay or discharge, must produce effects vis-à-vis assets situated within the territory of another member state only in the case of those creditors who have given their consent: art 17 para 2.

7 *Ibid* art 16 para 1. This provision applies also where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other member states: art 16 para 1. Furthermore, the recognition of main proceedings does not preclude the opening by a court in another member state of secondary proceedings (as to which see para 50 ante): art 16 para 2.

Where the courts of two member states both claim competence to open the main insolvency proceedings, the resolution of any dispute should be based on the principle of mutual trust. The decision of the first court to open proceedings should be recognised in the other member states without those member states having the power to scrutinise the court's decision: Recital 22. Cf *Re Eurofood IFSC Ltd* [2004] BCC 383.

8 Ibid art 25 para 1. These provisions apply also to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court, and to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings: art 25 para 1.

9 Ibid art 25 para 1. As to the Brussels Convention see para 46 note 3 ante; and CONFLICT OF LAWS vol 8(3) (Reissue) para 65. The provisions of the Brussels Convention referred to are arts 31-51, with the exception of art 34 para 2 (see CONFLICT OF LAWS vol 8(3) (Reissue) paras 187, 190, 192-198). The Brussels Convention also governs the recognition and enforcement of judgments other than those that fall within the European Regulation on Insolvency Proceedings art 25 para 1, provided that the Brussels Convention is applicable: European Regulation on Insolvency Proceedings art 25 para 2.

10 Ibid art 25 para 3. The principle of mutual trust which governs the mutual recognition of judgments delivered by the courts of the member states means that the grounds for non-recognition are reduced to the minimum that are considered to be necessary: Recital 22.

11 Ibid art 26.

UPDATE

46-70 European Regulation on Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

70 Principle and effects of recognition

NOTE 9--See Case C-292/08 *German Graphics Graphische Maschinen GmbH v Schee* [2009] All ER (D) 75 (Sep), ECJ (interaction of Regulation 1346/2000 with EC Council Regulation 44/2001).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(1) THE PROPOSAL/71. Proposals for voluntary arrangements.

4. COMPANY VOLUNTARY ARRANGEMENTS

(1) THE PROPOSAL

71. Proposals for voluntary arrangements.

A voluntary arrangement is a composition in satisfaction of a company's¹ debts or a scheme of arrangement of its affairs². A proposal for a voluntary arrangement is a proposal to a company and its creditors³ for an arrangement which provides for some person ('the nominee') to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation⁴. The nominee must be a person who is qualified to act as an insolvency practitioner⁵ or authorised to act as nominee in relation to the arrangement⁶.

A voluntary arrangement may also be made in respect of an insolvent partnership (or, as the case may be, the members of an insolvent partnership)⁷, or in respect of a limited liability partnership⁸.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a); and COMPANIES vol 14 (2009) PARAS 1, 24 (definition applied by the Insolvency Act 1986 s 251). For the purposes of the provisions relating to voluntary arrangements, a reference to a company includes a reference to a company in relation to which a proposal for a voluntary arrangement may be made by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the EC Regulation') art 3 (see para 46 et seq ante): Insolvency Act 1986 s 1(4) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 4); Insolvency Act 1986 s 436 (amended by the Insolvency Act 1986 (Amendment) Regulations 2002, SI 2002/1037, regs 2, 4). There is therefore jurisdiction to open voluntary arrangement proceedings in relation to a company or other legal person within the meaning of art 3 of the EC Regulation such as an association incorporated by royal charter: *Re Salvage Association* [2003] EWHC 1028 (Ch), [2003] 3 All ER 246, [2004] 1 WLR 174.

In relation to a building society, the Insolvency Act 1986 s 1 (as amended) has effect as if it required any proposal under Pt I (ss 1-7B) (as amended) to be so framed as to enable a building society to comply with the requirements of the Building Societies Act 1986 and as if any reference to 'debts' included a reference to liabilities owed to the holders of shares in the society: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 7 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and the Building Societies Act 1986 Sch 15A Pt I amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); by the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3, paras 131, 210; and by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)).

The provisions relating to voluntary arrangements may also be applied to a foreign company pursuant to the Insolvency Act 1986 s 426 (as amended) (see para 1029 et seq post) (which provides for co-operation between courts exercising jurisdiction in relation to insolvency): see *Re Television Trade Rentals Ltd* [2002] EWHC 211 (Ch), [2002] BPIR 859.

2 Insolvency Act 1986 s 1(1); Insolvency Rules 1986, SI 1986/1925, r 1.1. As to voluntary arrangements see further para 72 et seq post. In the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended), except in so far as the context otherwise requires, 'insolvency', in relation to a company, includes the approval of a voluntary arrangement under Pt I (ss 1-7B) (as amended): see s 247(1). As to the meanings of 'composition' and 'scheme of arrangement' in the context of s 1 see *March Estates plc v Gunmark Ltd* [1996] 2 BCLC 1, [1996] BPIR 439, Ch D; *IRC v Adam & Partners Ltd* [2001] 1 BCLC 222, [2002] BCC 247, CA.

3 Proposals for voluntary arrangements relating to limited liability partnerships are required to be made only to the partnership's creditors: see the Insolvency Act 1986 s 1(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. 'Limited liability partnership' means a limited liability partnership formed and registered under the Limited Liability Partnerships Act 2000: Insolvency Act 1986 s 436 (amended for these purposes by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3); and see para 1302 et seq post; and PARTNERSHIP vol 79 (2008) PARA 234 et seq.

4 Insolvency Act 1986 s 1(1), (2).

5 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

6 Insolvency Act 1986 s 1(2) (amended by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 2). The amendments made to the Insolvency Act 1986 by the Insolvency Act 2000 ss 2, 15(1), Sch 2 paras 1-12, Sch 5, and the amendments made to the Insolvency Rules 1986, SI 1986/1925, by the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(1), Schedule paras 1-21, do not apply if before 1 January 2003 the nominee has agreed and commenced to act in connection with a proposed voluntary arrangement (ie: (1) in the case of a proposal made by either the directors of a company or the liquidator or administrator (not acting as nominee), the intended nominee has endorsed a copy of the written notice of the proposal under the Insolvency Rules 1986, SI 1986/1925, r 1.4(3) (see para 110 post) or r 1.12(2) (see para 118 post); or (2) in the case of a proposal made by the liquidator or administrator acting as nominee (see para 116 post), the liquidator or administrator has sent out a notice summoning the meetings of the company and its creditors under the Insolvency Act 1986 s 3 and the Insolvency Rules 1986, SI 1986/1925, r 1.11 (see para 117 post)): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). Accordingly, in those circumstances the nominee is required to be a person who is qualified to act as an insolvency practitioner in relation to the company, and may not be a person who is authorised to act as nominee in relation to the proposed arrangement: Insolvency Act 1986 s 1(2) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1). Note that these provisions apply in relation to building societies as they apply in relation to companies, having effect with the substitution for 'company' of 'building society': art 3(2).

7 See para 1169 et seq post.

8 See para 1305 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

71 Proposals for voluntary arrangements

NOTE 1--Insolvency Act 1986 s 1(4) substituted, s 1(5), (6) added: Insolvency Act 1986 (Amendment) Regulations 2005, SI 2005/879. Insolvency Act 1986 s 1(4) amended: SI 2009/1941. Now, for the purposes of the provisions relating to voluntary arrangements in the Insolvency Act 1986 Pt I (ss 1-7B), 'company' means a company registered under the Companies Act 2006 in England and Wales or Scotland, a company incorporated in an EEA state other than the United Kingdom, or a company not incorporated in an EEA state but having its centre of main interests in a member state other than Denmark: 1986 Act s 1(4) (as so substituted and amended). 'EEA state' means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993: 1986 Act s 436 (definition added by SI 2005/879). In relation to a company, 'centre of main interests' has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office within the meaning of the EC Regulation: 1986 Act s 1(5) (as so added). If a company incorporated outside the United Kingdom has a principal place of business in Northern Ireland, no proposal under the 1986 Act Pt I may be made in relation to it unless it also has a principal place of business in England and Wales or Scotland, or in both: s 1(6) (as so added). Building Societies Act 1986 Sch 15A Pt I further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(1) THE PROPOSAL/72. Who may propose an arrangement; false representations.

72. Who may propose an arrangement; false representations.

A proposal for a voluntary arrangement¹ may be made by the directors² of a company³, unless the company is in administration⁴ or is being wound up⁵, in which case a proposal may be made by the administrator⁶ or, as the case may be, the liquidator⁷.

A person who is an officer⁸ of a company commits an offence if he makes any false representation or fraudulently does, or omits to do, anything for the purpose of obtaining the approval of the company's members⁹ or creditors to a proposal for a voluntary arrangement¹⁰, even if the proposal is not approved¹¹. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum¹², or to both¹³.

1 For the meaning of 'voluntary arrangement' see para 71 ante.

2 As to the meaning of 'director' see para 5 note 2 ante. Proposals for voluntary arrangements relating to limited liability partnerships are required to be made by the partnership: see the Insolvency Act 1986 s 1(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

3 As to the meaning of 'company' see para 71 note 1 ante.

4 If a special administration regime (see para 145 post) has effect or a petition for an administration order has been presented before 15 September 2003, the prohibition on the directors proposing a voluntary arrangement, and the power of the administrator so to do, is expressed as being in connection with a company for which an administration order is in force, as opposed to one which is in administration: Insolvency Act 1986 s 1(1) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

5 Insolvency Act 1986 s 1(1) (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 10(a)). See further para 108 post.

6 Insolvency Act 1986 s 1(3)(a) (substituted by the Enterprise Act 2002 Sch 17 para 10(b)). See note 4 supra. See further para 108 post. Where a voluntary arrangement relating to a limited liability partnership is proposed by the administrator or the liquidator, it must also be made to the partnership: see the Insolvency Act 1986 s 1(3) (as amended); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

7 Insolvency Act 1986 s 1(3)(b). See note 6 supra. See further para 108 post.

8 For the meaning of 'officer' see para 690 post; for these purposes, 'officer' includes a shadow director: s 6A(3) (s 6A added by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 8). The Insolvency Act 1986 s 6A (as added) does not apply where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies: Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1)). For the meaning of 'shadow director' see para 5 note 3 ante.

9 For the purposes of any provision in the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended) (except insofar as relating to insolvency proceedings concerning limited liability partnerships), a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company; and references to a member or members are to be read accordingly: s 250; Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3. See para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

10 Insolvency Act 1986 s 6A(1) (as added: see note 8 supra). In cases where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), this offence may also be committed by past officers of the company: Insolvency Rules 1986, SI 1986/1925, r 1.30 (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(1), (2), Schedule para 20.

11 Insolvency Act 1986 s 6A(2) (as added: see note 8 supra).

12 As to the statutory maximum see para 10 note 1 ante.

13 Insolvency Act 1986 ss 6A(4), 430, Sch 10. Section 431 (summary proceedings: see para 927 post) has effect in relation to such an offence.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(i) Eligibility and Exclusion/73. Eligibility for moratorium.

(2) MORATORIUM

(i) Eligibility and Exclusion

73. Eligibility for moratorium.

Where the directors¹ of a company² intend to make a proposal for a voluntary arrangement³, they may, if the company is eligible, take steps to obtain a moratorium⁴ for the company⁵. A company is eligible for a moratorium if in either the year ending with the date of filing⁶ or the financial year⁷ of the company which ended last before that date it satisfied two or more of the statutory requirements for being a small or medium-sized company⁸. However, a company is not eligible for a moratorium, notwithstanding that it meets those requirements, if:

- 99 (1) it is a holding company of a group of companies which does not qualify as a small group or a medium-sized group⁹ in respect of the financial year of the company which ended last before the date of filing¹⁰;
- 100 (2) it effects or carries out contracts of insurance but is not exempt from the general prohibition in relation to that activity¹¹;
- 101 (3) it has permission to accept deposits¹²;
- 102 (4) it has a liability in respect of a deposit which it accepted in accordance with the appropriate statute¹³;
- 103 (5) it is a party to a market contract¹⁴ or any of its property is subject to a market-charge¹⁵ or a system-charge¹⁶; or
- 104 (6) it is a participant¹⁷ or any of its property is subject to a collateral security charge¹⁸.

Certain types of company are excluded from being eligible for a moratorium¹⁹.

1 As to the meaning of 'director' see para 5 note 2 ante.

2 As to the meaning of 'company' see para 71 note 1 ante. The provisions regarding a moratorium (ie the Insolvency Act 1986 Sch A1 (as added and amended)) apply also to a company which is, or has been, an authorised person within the meaning given by the Financial Services and Markets Act 2000 s 31 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 314), is, or has been, an appointed representative within the meaning of s 39 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 346) or is carrying on, or has carried on, a regulated activity within the meaning of s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84) in contravention of the general prohibition within the meaning of s 19 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 80): Insolvency Act 1986 s 1A(2), Sch A1 para 44(1), (18) (s 1A, Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2, 4). These are known as regulated companies, and in such a case any notice or other document required to be sent to a creditor of a regulated company must also be sent to the Financial Services Authority: Sch A1 para 44(2) (as so added). The provisions relating to the role of the Financial Services Authority do not prejudice any right the Authority has, apart from those provisions, as a creditor of the regulated company: Sch A1 para 44(17) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

3 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post.

4 Ie a moratorium under the Insolvency Act 1986 Sch A1 (as added and amended): Sch A1 para 1 (as added: see note 2 supra).

5 Ibid s 1A(1) (as added: see note 2 supra). The provisions of Sch A1 (as added and amended) have effect with respect to companies eligible for a moratorium under s 1A (as added), the procedure for obtaining such a moratorium, the effects of such a moratorium, and the procedure applicable (in place of ss 2-6, 7 (as amended) (see para 109 et seq post)) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force: s 1A(2) (as so added).

6 'The date of filing' means the date on which the documents for the time being referred to in ibid Sch A1 para 7(1) (as added) (see para 77 post) are filed or lodged with the court: Sch A1 para 1 (as added: see note 2 supra). For the meaning of 'the court' see para 4 ante.

7 A company's financial year is to be determined in accordance with the Companies Act 1985 (see COMPANIES vol 15 (2009) PARA 711): Insolvency Act 1986 Sch A1 para 3(2)(b) (as added: see note 2 supra).

8 Ibid Sch A1 paras 2(1), 3(1), (2)(a) (as added: see note 2 supra). The statutory requirements for being a small or medium-sized company are the requirements specified for the time being by the Companies Act 1985 s 247(3) (as substituted and amended): Insolvency Act 1986 Sch A1 para 3(2)(a) (as so added). The provisions of the Companies Act 1985 s 247(4)-(6) (as substituted and amended) are also applicable for these purposes: Insolvency Act 1986 Sch A1 para 3(3) (as so added). As to these requirements see COMPANIES vol 15 (2009) PARAS 694-695.

9 For the meaning of 'group' for these purposes see the Companies Act 1985 s 262(1) (as substituted) (definition applied by the Insolvency Act 1986 Sch A1 para 3(5) (Sch A1 as added (see note 2 supra); Sch A1 para 3(4), (5) added by the Insolvency Act 1986 (Amendment) (No 3) Regulations 2002, SI 2002/1990, reg 3(1), (2))). A group qualifies as small or medium-sized if it qualifies as such under the Companies Act 1985 s 249 (as amended) (see COMPANIES vol 15 (2009) PARAS 694-695): Insolvency Act 1986 Sch A1 para 3(5) (as so added).

The Insolvency Act 1986 (Amendment) (No 3) Regulations 2002, SI 2002/1990, were made under the Insolvency Act 1986 Sch A1 para 5 (as so added), which empowers the Secretary of State by regulations to modify the qualifications for eligibility of a company for a moratorium. As to the Secretary of State see para 11 note 10 ante. Regulations and orders under Sch A1 (as added and amended) may make different provision for different cases: Sch A1 para 45(1) (as so added). Regulations may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient: Sch A1 para 45(2) (as so added). Any power of the Secretary of State under Sch A1 may be exercised by amending or repealing any enactment contained in the Insolvency Act 1986 (including one contained in Sch A1 (as added and amended)) or contained in the Company Directors Disqualification Act 1986: Insolvency Act 1986 Sch A1 para 45(3) (as so added). Regulations (except regulations under Sch A1 para 5 (as added)) or an order made by the Secretary of State under Sch A1 (as added and amended) must be made by statutory instrument subject to amendment in pursuance of a resolution of either House of Parliament: Sch A1 para 45(4) (as so added). Regulations under Sch A1 para 5 (as added) are made by statutory instrument and may only be made if a draft containing the regulations has been laid before and approved by resolution of each House of Parliament: Sch A1 para 45(5) (as so added).

10 Ibid Sch A1 para 3(4) (as added: see note 2 supra).

11 Ibid Sch A1 para 2(1)(b), (2)(a) (Sch A1 as added (see note 2 supra); Sch A1 para 2(2)(a), (b) substituted, and Sch A1 para 2(2)(bb) added, by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 29(1), (2)). The general prohibition is that within the meaning of the Financial Services and Markets Act 2000 s 19 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 80): see the Insolvency Act 1986 Sch A1 para 2(2)(a) (as so added and substituted). Schedule A1 paras 2(2)(a), (b), (bb) (as substituted and added) must be read with the Financial Services and Markets Act 2000 s 22, Sch 2, and any relevant order under s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 84, 85): see the Insolvency Act 1986 Sch A1 para 2(3) (Sch A1 as so added; Sch A1 para 2(3) added by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 29(1), (3)).

12 Insolvency Act 1986 Sch A1 para 2(1)(b), (2)(b) (as added and substituted: see notes 2, 11 supra). Permission to accept deposits may be given under the Financial Services Markets Act 2000 Pt IV (ss 40-55) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 348 et seq): see the Insolvency Act 1986 Sch A1 para 2(2)(b) (as so added and substituted).

13 Ibid Sch A1 para 2(1)(b), (2)(bb) (as added: see notes 2, 11 supra). Schedule A1 para 2(2)(bb) (as added) provides that the appropriate statute for these purposes is either the Banking Act 1979 (repealed) or the Banking Act 1987 (repealed): see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791 et seq.

14 A market contract is one of the descriptions of contract to which the Companies Act 1989 Pt VII (ss 154-191) (as amended) applies (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 509 et seq): Insolvency Act 1986 Sch A1 para 1 (as added: see note 2 supra); Companies Act 1989 s 155(1).

15 A market charge is a charge for the purposes of *ibid* Pt VII (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 509 et seq): Insolvency Act 1986 Sch A1 para 1 (as added: see note 2 supra).

16 Insolvency Act 1986 Sch A1 para 2(1)(b), (2)(c) (as added: see note 2 supra; Sch A1 para 2(2)(c) amended by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 28(1), (3)). A system-charge is a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996, SI 1996/1469, reg 2: Insolvency Act 1986 Sch A1 para 1 (as so added).

17 *Ie* within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 2: Insolvency Act 1986 Sch A1 paras 1, 2(2)(d) (as added: see note 2 supra).

18 *Ibid* Sch A1 para 2(1)(b), (2)(d) (as added: see note 2 supra). A collateral security charge for these purposes is a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, reg 2: Insolvency Act 1986 Sch A1 paras 1, 2(2)(d) (as added: see note 2 supra).

19 See para 74 et seq post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

73 Eligibility for moratorium

NOTES 8-10--1986 Act Sch A1 para 3(2)-(4) amended, Sch A1 para 3(5) substituted to take account of the coming into force of the Companies Act 2006: SI 2008/948. Insolvency Act 1986 Sch A1 para 3(6) added: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(i) Eligibility and Exclusion/74. Excluded companies.

74. Excluded companies.

A company¹ is excluded from being eligible for a moratorium² if, on the date of filing³:

- 105 (1) it is in administration⁴;
- 106 (2) it is being wound up⁵;
- 107 (3) there is an administrative receiver⁶ of the company⁷;
- 108 (4) a voluntary arrangement⁸ has effect in relation to the company⁹;
- 109 (5) there is a provisional liquidator of the company¹⁰;
- 110 (6) a moratorium has been in force for the company at any time during the last 12 months¹¹;
- 111 (7) an administrator¹² has held office during the last 12 months¹³;
- 112 (8) a voluntary arrangement¹⁴ has come to an end prematurely¹⁵ and, during the last 12 months, an order to stay or sist proceedings¹⁶ has been made¹⁷;
- 113 (9) it is a party to an agreement¹⁸ which is or forms part of a capital market arrangement¹⁹;
- 114 (10) it is a project company of a project²⁰ which is a public-private partnership project²¹ and includes step-in rights²²; or
- 115 (11) it has incurred a liability²³ under an agreement²⁴ of £10 million or more²⁵.

1 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). As to eligibility for a moratorium under the Insolvency Act 1986 s 1A (as added) see para 73 ante.

3 For the meaning of 'the date of filing' see para 73 note 6 ante.

4 Insolvency Act 1986 Sch A1 paras 2(1)(a), 4(1)(a) (Sch A1 as added (see note 2 supra); Sch A1 para 4(1)(a) substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 37(1), (2)(a)). If a special administration regime (see para 145 post) has effect, or a petition for an administration order has been presented before 15 September 2003, the exclusion from eligibility for a moratorium of such a company is expressed as being on the grounds that an administration order is in force in respect of it, as opposed to that it is in administration: Insolvency Act 1986 Sch A1 para 4(1)(a) (as so added); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

5 Insolvency Act 1986 Sch A1 paras 2(1)(a), 4(1)(b) (as added: see note 2 supra). The exclusion does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date: Sch A1 para 4(2) (as so added).

6 For the meaning of 'administrative receiver' see para 8 note 2 ante.

7 Insolvency Act 1986 Sch A1 paras 2(1)(a), 4(1)(c) (as added: see note 2 supra).

8 For the meaning of 'voluntary arrangement' see para 71 ante.

9 Insolvency Act 1986 Sch A1 paras 2(1)(a), 4(1)(d) (as added: see note 2 supra).

10 Ibid Sch A1 paras 2(1)(a), 4(1)(e) (as added: see note 2 supra). As to the appointment and powers of provisional liquidators see para 491 et seq post.

11 Ibid Sch A1 paras 2(1)(a), 4(1)(f) (as added: see note 2 supra). The exclusion will not, however, apply if there was no voluntary arrangement in effect at the time at which the moratorium came to an end or a

voluntary arrangement which had effect at any time in that period has come to an end prematurely: Sch A1 para 4(1)(f)(i), (ii) (as so added).

12 Ie an administrator appointed by the company or the directors of the company under *ibid* Sch B1 para 22 (as added) (see para 236 et seq post).

13 Ibid Sch A1 paras 2(1)(a), 4(1)(fa) (Sch A1 as added (see note 2 supra); Sch A1 para 4(1)(fa) added by the Enterprise Act 2002 Sch 17 paras 9, 37(1), (2)(b)). This ground of exclusion is not applicable if a special administration regime has effect or in relation to a company in respect of which a petition for an administration order has been presented before 15 September 2003: Insolvency Act 1986 Sch A1 para 4 (as so added); Enterprise Act 2000 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

14 Ie an arrangement in relation to the company which had effect in pursuance of a proposal made by an administrator or a liquidator under the Insolvency Act 1986 s 1(3) (as amended) (see para 72 ante).

15 A voluntary arrangement the approval of which has taken effect (ie under *ibid* s 4A (as added) (where no moratorium has been sought: see para 130 post) or Sch A1 para 36 (as added) (where a moratorium has had effect: see para 103 post)) comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound (ie under s 5(2)(b)(ii) (see para 131 post)) or Sch A1 para 37(2)(b) (i) (see para 104 post)) by the arrangement: s 7B (added by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 10). The Insolvency Act 1986 s 7B (as added) does not apply where the nominee (see paras 71 ante, 75 note 4 post) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3).

16 Ie an order under the Insolvency Act 1986 s 5(3) (as amended) (see para 131 post) to stay or sist all proceedings in the winding up or to provide for the appointment of the administrator to cease to have effect.

17 Ibid Sch A1 paras 2(1)(a), 4(1)(g) (as added: see note 2 supra).

18 For the purposes of *ibid* Sch A1 paras 4A, 4C, 4J (as added), 'party' to an arrangement includes a party to an agreement which forms part of the arrangement, provides for the raising of finance as part of the arrangement, or is necessary for the purposes of implementing the arrangement; and 'agreement' includes an agreement or undertaking effected by contract, deed or any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction: Sch A1 para 4D(3) (Sch A1 as added (see note 2 supra); Sch A1 paras 4A-4K added by the Insolvency Act 1986 (Amendment) (No 3) Regulations 2002, SI 2002/1990, reg 3(1), (3)).

19 Ibid Sch A1 para 4A (as added: see notes 2, 18 supra). This exclusion will not, however, apply unless a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million (which may be incurred at any time during the life of the capital market arrangement and may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent is to be calculated as at the time when the arrangement is entered into)) under the arrangement (Sch A1 paras 4A(i), 4G (as so added)) and the arrangement involves the issue of a capital market investment (Sch A1 para 4A(ii) (as so added)).

For these purposes, an arrangement is a capital market arrangement if: (1) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement (Sch A1 para 4D(1)(a) (as so added)); (2) at least one party guarantees the performance of obligations of another party (Sch A1 para 4D(1)(b) (as so added)); (3) at least one party provides security in respect of the performance of obligations of another party (Sch A1 para 4D(1)(c) (as so added)); and (4) the arrangement involves an option, future or contract for difference (ie an investment of a kind described in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, arts 83-85 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 224)) (Insolvency Act 1986 Sch A1 para 4D(1)(d) (as so added)). For these purposes, a reference to holding as trustee includes a reference to holding as nominee or agent (Sch A1 para 4D(2)(a) (as so added)); a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment (Sch A1 para 4D(2)(b) (as so added)); and a person holds a capital market investment if he has a legal or beneficial interest in it (Sch A1 para 4D(2)(c) (as so added)).

For these purposes, an investment is a capital market investment if it is a debt instrument (ie an instrument within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 77 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 224)) and it is rated, listed or traded or designed to be rated, listed or traded: Insolvency Act 1986 Sch A1 para 4E(1) (as so added). 'Listed' means admitted to the official list within the meaning given by the Financial Services and Markets Act 2000 s 103(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 387); 'rated' means rated for the purposes of investment by an internationally recognised rating agency; and 'traded' means admitted to trading on a market established under the rules of a recognised investment exchange (within the meaning of the Financial Services and Markets Act 2000 s 285 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 684)) or foreign market (which for these

purposes has the same meaning as 'relevant market' in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 67(2) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 280)); Insolvency Act 1986 Sch A1 para 4E(2), (3) (as so added). An investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of: (a) an investment professional (within the meaning of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 19(5) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 255), but note that for these purposes an exempt person qualifies as an investment professional whether or not the relevant communication relates to a controlled activity which is a regulated activity in relation to which the person is exempt, and any other person may qualify as an investment professional in relation to any controlled activity) (Insolvency Act 1986 Sch A1 para 4F(1)(a), (2)(a) (as so added)); (b) a person who, when the agreement is entered into, is a certified high net worth individual (within the meaning of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 48(2) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 295)) (Insolvency Act 1986 Sch A1 para 4F(1)(b) (as so added)); (c) a high net worth company or unincorporated association (ie a person to whom the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 49(2) applies (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 296), but note that for these purposes persons not connected with the company or association are excluded) (Insolvency Act 1986 Sch A1 para 4F(1)(c), (2)(b) (as so added)); (d) a person who is, when the agreement is entered into, a certified sophisticated investor (ie in relation to a communication within the meaning of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 50(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 297, 298)) (Insolvency Act 1986 Sch A1 para 4F(1)(d) (as so added)); and (e) a person in a state other than the United Kingdom who under the law of that state is not prohibited from investing in bonds or commercial paper (Sch A1 para 4F(1)(e) (as so added)). For these purposes, 'bond' is construed in accordance with the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 77 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 224) and 'commercial paper' has the meaning given by art 9(3) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 93): Insolvency Act 1986 Sch A1 para 4F(3) (as so added). For the meaning of 'connected' with a company see para 5 ante.

For the purposes of Sch A1 paras 4A-4J (as added and amended), a reference to a person includes a reference to a partnership or another unincorporated group of persons: Sch A1 para 4K (as so added).

20 For these purposes, a company is a 'project company' of a project if: (1) it holds property for the purpose of the project (ibid Sch A1 para 4H(1)(a) (as added: see notes 2, 18 supra)); (2) it has sole or principal responsibility under an agreement for carrying out all or part of the project (Sch A1 para 4H(1)(b) (as so added)); (3) it is one of a number of companies which together carry out the project (Sch A1 para 4H(1)(c) (as so added)); or (4) it has the purpose of supplying finance to enable the project to be carried out (Sch A1 para 4H(1)(d) (as so added)). However, a company will not be a project company if, notwithstanding its carrying out any of these functions, it also performs a function which is neither one of these functions, nor related to one of these functions, nor related to the project (Sch A1 para 4H(2) (as so added)). A company is also a 'project company' of a project if it is the holding company of a company which carries out any of the specified functions (Sch A1 para 4H(1)(e) (as so added)), provided that it does not also perform a function which is neither one of those functions, nor related to one of those functions, nor related to the project (Sch A1 para 4H(2) (as so added)). For these purposes, a company carries out all or part of a project whether or not it acts wholly or partly through agents: Sch A1 para 4H(3) (as so added)).

21 For these purposes, 'public-private partnership project' means a project the resources for which are provided partly by one or more public bodies and partly by one or more private persons (ibid Sch A1 para 4I(1) (a) (as added: see notes 2, 18 supra)) or which is designed wholly or mainly for the purpose of assisting a public body to discharge a function (Sch A1 para 4I(1)(b) (as so added)). 'Resources' includes funds (including payment for the provision of services or facilities), assets, professional skill, the grant of a concession or franchise and any other commercial resource: Sch A1 para 4I(2) (as so added). 'Public body' means a body which exercises public functions, a body specified for these purposes by the Secretary of State, and a body within a class specified for these purposes by the Secretary of State (Sch A1 para 4I(3) (as so added)), such specification being general or for the purpose of the application of these provisions to a specified case (Sch A1 para 4I(4) (as so added)). As to the Secretary of State see para 11 note 10 ante. At the date at which this volume states the law no such body or class of body had been specified for these purposes.

22 Ibid Sch A1 para 4B (as added: see notes 2, 18 supra). For these purposes, a project has 'step-in rights' if a person who provides finance (which may include the provision of an indemnity) in connection with the project has a conditional entitlement under an agreement (see note 18 supra) to assume sole or principal responsibility for carrying out all or part of the project or make arrangements for carrying out all or part of the project: Sch A1 para 4J (as so added).

23 For these purposes, 'liability' includes a present or future liability whether, in either case, it is certain or contingent (ibid Sch A1 para 4C(3)(a) (as added: see notes 2, 18 supra)) and includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent is to be calculated as that date when the liability is incurred) (Sch A1 para 4C(3)(b) (as so added)).

24 See note 18 supra.

25 Insolvency Act 1986 Sch A1 para 4C(1) (as added: see notes 2, 18 supra). Where the liability is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided: Sch A1 para 4C(2) (as so added).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

74 Excluded companies

NOTE 19--SI 2001/1335 arts 19(5), 48(2), 49(2), 50(1), 67(2) now Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, SI 2005/1529, arts 19(5), 48(2), 49(2), 50(1), 67(2).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(ii) Obtaining a Moratorium/75. Information to be submitted to nominee.

(ii) Obtaining a Moratorium

75. Information to be submitted to nominee.

Where the directors¹ of a company² wish to obtain a moratorium³, they must first submit to the nominee⁴ a document setting out the terms of the proposed voluntary arrangement⁵ and a statement of the company's affairs⁶. The information required to be submitted to the nominee under these provisions is in addition to any information necessary to enable the nominee to submit his own statement⁷, which he may request from the directors and which the directors are obliged to supply⁸. The documents required to be delivered to the nominee must be delivered to the nominee himself or to a person authorised to take delivery of the documents on his behalf⁹. On receipt of the documents, the nominee must forthwith issue an acknowledgement of receipt of the documents to the directors which must indicate the date on which the documents were received¹⁰.

1 As to the meaning of 'director' see para 5 note 2 ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

4 'The nominee' includes any person for the time being carrying out the functions of a nominee under the Insolvency Act 1986 Sch A1 (as added and amended): Sch A1 para 1 (as added: see note 3 supra).

5 Ibid Sch A1 para 6(1)(a) (as added: see note 3 supra). For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post. The document setting out the terms of the proposed voluntary arrangement must be prepared by the directors: Insolvency Rules 1986, SI 1986/1925, r 1.35(1)(a) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). The document must comply with the requirements as to the contents of the proposal (ie the Insolvency Rules 1986, SI 1986/1925, r 1.3(1), (2), save that the reference to preferential creditors is a reference to preferential creditors within the meaning of the Insolvency Act 1986 Sch A1 para 31(8) (as added) (see para 96 post)) (Insolvency Rules 1986, SI 1986/1925, r 1.35(1)(b) (as so added)), and must state the address to which notice of the consent of the nominee to act and the nominee's statement and annexures must be sent (r 1.35(1)(c) (as so added)). Subject to the written agreement of the nominee, the directors may amend the proposal at any time before the submission (pursuant to the Insolvency Act 1986 Sch A1 para 6(2) (as added) (see para 76 post)) to them of the nominee's statement: Insolvency Rules 1986, SI 1986/1925, r 1.35(2) (as so added).

6 Insolvency Act 1986 Sch A1 para 6(1)(b) (as added: see note 3 supra). The statement must contain such particulars of the company's creditors and of its debts and other liabilities and of its assets as may be prescribed (Sch A1 para 6(1)(b)(i) (as so added)) and such other information as may be prescribed (Sch A1 para 6(1)(b)(ii) (as so added)). 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. The statement of the company's affairs required to be delivered to the nominee must be so delivered no later than seven days after the delivery to him of the document setting out the terms of the proposed voluntary arrangement, or such longer time as he may allow (Insolvency Rules 1986, SI 1986/1925, r 1.37(1) (as added: see note 5 supra)), and must comprise the same particulars required by r 1.5(2) (see para 111 post) supplementing or amplifying, so far as is necessary for clarifying the statement of the company's affairs, those already given in the directors' proposal (r 1.37(2) (as so added)). The statement of affairs must be made up to a date not earlier than two weeks before the date for delivery of the document containing the proposal for the voluntary arrangement to the nominee but the nominee may allow an extension of that period, not earlier than two months before the date of delivery of the documents to the nominee, and, if

he does so, he must give a statement of his reasons in writing to the directors (r 1.37(3) (as so added)). The statement of affairs must be certified as correct, to the best of their knowledge and belief, by two or more directors of the company or by the company secretary and at least one director, other than the secretary himself (r 1.37(4) (as so added)).

7 le to comply with the Insolvency Act 1986 Sch A1 para 6(2) (as added) (see para 76 post).

8 Ibid Sch A1 para 6(1)(c) (as added: see note 3 supra).

9 Insolvency Rules 1986, SI 1986/1925, r 1.36(1) (as added: see note 5 supra).

10 Ibid r 1.36(2) (as added: see note 5 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

75 Information to be submitted to nominee

NOTE 6--SI 1986/1925 r 1.37(4) substituted: SI 2010/686.

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76. Nominee's statement.

Where the directors¹ of a company² wish to obtain a moratorium³ and have submitted to the nominee⁴ the necessary documents⁵, the nominee is required to submit to the directors a statement in the prescribed form⁶ indicating whether or not, in his opinion: (1) the proposed voluntary arrangement⁷ has a reasonable prospect of being approved and implemented⁸; (2) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business⁹; and (3) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement¹⁰. In forming his opinion on these matters, the nominee is entitled to rely on the information submitted to him by the directors¹¹ unless he has reason to doubt its accuracy¹².

The nominee's statement must be submitted to the directors within 28 days of the submission to him of the document setting out the terms of the proposed voluntary arrangement¹³. The statement must have annexed to it the nominee's comments on the proposal, unless it contains an opinion in the negative as to whether the proposed voluntary arrangement has a reasonable prospect of being approved and implemented or whether the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, in which case he must instead give his reasons for that opinion¹⁴. Where the nominee is willing to act in relation to the proposed arrangement, the statement must also have annexed to it a statement of his consent to act¹⁵.

1 As to the meaning of 'director' see para 5 note 2 ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

4 As to the meaning of 'the nominee' see para 75 note 4 ante.

5 As to the information required to be submitted to the nominee see para 75 ante.

6 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. For the prescribed form for the nominee's statement see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 1.5.

7 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post.

8 Insolvency Act 1986 Sch A1 para 6(2)(a) (as added: see note 3 supra).

9 Ibid Sch A1 para 6(2)(b) (as added: see note 3 supra). The reference to the company's business is a reference to that business as the company proposes to carry it on during the moratorium: Sch A1 para 6(4) (as so added).

10 Ibid Sch A1 para 6(2)(b) (as added: see note 3 supra).

11 I.e. in pursuance of ibid Sch A1 para 6(1) (as added) (see para 75 ante).

12 Ibid Sch A1 para 6(3) (as added: see note 3 supra).

13 Insolvency Rules 1986, SI 1986/1925, r 1.38(1) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

14 Insolvency Rules 1986, SI 1986/1925, r 1.38(2)(a) (as added: see note 13 supra).

15 Ibid r 1.38(2)(b) (as added: see note 13 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(ii) Obtaining a Moratorium/77. Documents to be submitted to court.

77. Documents to be submitted to court.

Having submitted the required information to the nominee¹, the directors² of a company³ wishing to obtain a moratorium⁴ must file with the court⁵:

- 116 (1) a document setting out the terms of the proposed voluntary arrangement⁶;
- 117 (2) a statement of the company's affairs⁷;
- 118 (3) a statement that the company is eligible for a moratorium⁸;
- 119 (4) a statement from the nominee that he has given his consent to act⁹; and
- 120 (5) the nominee's statement¹⁰.

Each of the statements required to be filed with the court, other than that setting out the terms of the proposed voluntary arrangement and except so far as containing particulars of the company's creditors, debts, other liabilities and assets, must be in the prescribed form¹¹. The documents and statements must be delivered to the court together with four copies of a schedule listing them within three working days of the date of the submission to the directors of the nominee's statement¹².

1 See para 75 ante. As to the meaning of 'the nominee' see para 75 note 4 ante.

2 As to the meaning of 'director' see para 5 note 2 ante.

3 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

4 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

5 For the meaning of 'the court' see para 4 ante. The Secretary of State may by regulations modify the requirements as to the documents required to be filed with the court in order to obtain a moratorium: Insolvency Act 1986 Sch A1 para 7(4) (as added: see note 4 supra). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see para 11 note 10 ante. As to the making of regulations under Sch A1 (as added and amended) see para 73 note 9 ante.

6 Ibid Sch A1 para 7(1)(a) (as added: see note 4 supra). For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post. As to the preparation of this document see para 76 ante.

7 Ibid Sch A1 para 7(1)(b) (as added: see note 4 supra). The statement must contain such particulars of the company's creditors and of its debts and other liabilities and of its assets as may be prescribed (Sch A1 para 7(1)(b)(i) (as so added)) and such other information as may be prescribed (Sch A1 para 7(1)(b)(ii) (as so added)). 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. Where the directors file the necessary documents and statements they must also file a copy of any statement of reason made by the nominee where allowing an extension of the period for the making up of the statement of affairs (ie pursuant to the Insolvency Rules 1986, SI 1986/1925, r 1.37(3) (as added) (see para 75 note 6 ante) and a copy of the nominee's comments (ie pursuant to r 1.38(2) (as added) (see para 76 ante)) on the proposal submitted: r 1.39(2) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

8 Insolvency Act 1986 Sch A1 para 7(1)(c) (as added: see note 4 supra).

9 Ibid Sch A1 para 7(1)(d) (as added: see note 4 supra).

10 Ibid Sch A1 para 7(1)(e) (as added: see note 4 supra). As to the matters to be covered in this statement see Sch A1 para 7(1)(e)(i)-(iii), (3) (as added); and para 76 ante.

11 Ibid Sch A1 para 7(2) (as added: see note 4 supra). For the prescribed form for a statement of a company's affairs see the Insolvency Rules 1986, SI 1986/1925, rr 1.39, 12.7, Sch 4 Form 1.6 (Forms 1.6, 1.7 substituted by SI 2002/2712). The statement of affairs must comprise the same particulars as required by the general provisions relating to statements of affairs (ie the Insolvency Rules 1986, SI 1986/1925, r 1.5(2) (see para 111 post)); r 1.39(4) (as added: see note 7 supra). For the prescribed form for a statement of eligibility for a moratorium see Sch 4 Form 1.7 (as so substituted).

12 Ibid r 1.39(1) (as added: see note 7 supra). As to the nominee's statement see para 76 ante. The copies of the schedule must be endorsed by the court with the date on which the documents were filed in court and three copies of the schedule sealed by the court must be returned by the court to the person who filed the documents in court: r 1.39(3) (as so added). After receiving copies of the schedule so endorsed, the directors must forthwith serve two of them on the nominee and one on the company: r 1.40(1) (as so added).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iii) Commencement, Duration and Extension/78. Beginning of moratorium.

(iii) Commencement, Duration and Extension

78. Beginning of moratorium.

A moratorium¹ comes into force when the documents for the time being required to be filed with the court² are so filed³.

1 le a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 See para 77 ante. For the meaning of 'the court' see para 4 ante.

3 Insolvency Act 1986 Sch A1 para 8(1) (as added: see note 1 supra). The time when the moratorium comes into force in accordance with these provisions is known as 'the beginning of the moratorium': Sch A1 paras 1, 8(1) (as so added). As to notification and advertisement of the beginning of the moratorium see para 79 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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79. Notification and advertisement of beginning of moratorium.

When a moratorium comes into force¹ the directors² must notify the nominee³ of that fact forthwith⁴, and the nominee must forthwith notify the registrar of companies⁵, the company⁶ and any petitioning creditor⁷ of the company of whose claim he is aware⁸. The nominee must also give notice of the coming into force of the moratorium, specifying the date on which it came into force, to any sheriff or other officer who, to his knowledge, is charged with an execution or other legal process against the company or its property and any person who, to his knowledge, has distrained against the company or its property⁹. Forthwith after receiving copies of the schedule listing the documents and statements filed with the court¹⁰, the nominee must advertise the coming into force of the moratorium once in the Gazette and once in such newspaper as he thinks most appropriate for ensuring that its coming into force comes to the notice of the company's creditors¹¹. If the directors without reasonable excuse fail to comply with any of the requirements imposed on them by these provisions each of them is liable to imprisonment or a fine or both¹². If the nominee without reasonable excuse fails to comply with any of these requirements imposed on him by these provisions he is liable to a fine¹³.

1 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante. As to the coming into force of the moratorium see para 78 ante.

2 As to the meaning of 'director' see para 5 note 2 ante.

3 As to the meaning of 'the nominee' see para 75 note 4 ante.

4 Insolvency Act 1986 Sch A1 para 9(1) (as added: see note 1 supra).

5 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

6 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

7 'Petitioning creditor' means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium as long as the petition has not been dismissed or withdrawn: Insolvency Act 1986 Sch A1 para 10(2) (as added: see note 1 supra).

8 Ibid Sch A1 para 10(1)(b) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.40(3) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). The nominee's notification must specify the date on which the moratorium came into force: Insolvency Rules 1986, SI 1986/1925, r 1.40(3) (as so added).

9 Ibid r 1.40(4) (as added: see note 8 supra).

10 Ie the schedule listing the documents and statements referred to in the Insolvency Act 1986 Sch A1 para 7 (as added) (see para 77 ante) and required to be delivered under the Insolvency Rules 1986, SI 1986/1925, r 1.39(1) (as added) (see para 77 ante). After receiving copies of this schedule, the directors must forthwith serve two of them on the nominee and one on the company: see r 1.40(1) (as added: see note 8 supra). See also para 77 note 12 ante. For the meaning of 'the court' see para 4 ante.

11 Insolvency Act 1986 Sch A1 para 10(1)(a) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.40(2) (as added: see note 8 supra). As to the Gazette, and the gazetting of notices, see para 1048 post.

12 Insolvency Act 1986 Sch A1 para 9(2) (as added: see note 1 supra). Such an offence is punishable: (1) on indictment by a term of imprisonment not exceeding two years, or a fine, or both; or (2) summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

13 Insolvency Act 1986 Sch A1 para 10(3) (as added: see note 8 supra). Such an offence is punishable on summary conviction by a fine not exceeding one-fifth of the statutory maximum: Sch 10 (as added: see note 12 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

79 Notification and advertisement of beginning of moratorium

TEXT AND NOTES 8, 10, 11--SI 1986/1925 r 1.40(2A) added, r 1.40(3) amended: SI 2010/686.

TEXT AND NOTE 9--For 'sheriff' read 'enforcement officer': SI 1986/1925 r 1.40(4) (amended by SI 2005/527).

TEXT AND NOTES 10, 11--SI 1986/1925 r 1.40(2) substituted: SI 2009/642.

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80. End of moratorium.

A moratorium¹ ends at the end of the day on which the meetings of the company² and its creditors³ are first held or, if the meetings are held on different days, the later of those days, unless it is extended⁴. If, however, either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force⁵, the moratorium ends at the end of the day on which those meetings were to be held or, if those meetings were summoned to be held on different days, the later of those days, unless it is extended⁶. If the nominee fails to summon either meeting within the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the last day of that period⁷. If the moratorium has not previously come to an end it ends at the end of the day on which a decision to approve a voluntary arrangement⁸ takes effect⁹.

1 le a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante. As to the coming into force of the moratorium see para 78 ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 See para 96 et seq post.

4 Insolvency Act 1986 Sch A1 para 8(2) (as added: see note 1 supra). As to notification and advertisement of the end of the moratorium see para 81 post. As to the extension of a moratorium see para 82 post. Where a moratorium is extended, or further extended, it ends at the end of the day to which it is extended, or further extended: Sch A1 para 8(5) (as so added). The provisions of Sch A1 para 8(2)-(5) (as added) do not apply if the moratorium comes to an end before the time concerned by virtue of the effect of withdrawal by the nominee of consent to act (see Sch A1 para 25(4) (as added); and para 85 post), an order in respect of a challenge of the actions of the nominee or directors (see Sch A1 paras 26(3), 27(3), 40 (as added); and paras 86, 93 post) or a decision of the meetings of the company and creditors (see Sch A1 para 29 (as added); and paras 96-97 post): Sch A1 para 8(6) (as so added).

5 The Secretary of State may by order increase or reduce this period: *ibid* Sch A1 para 8(8) (as added: see note 1 supra). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante. As to the making of orders under Sch A1 (as added and amended) see para 73 note 9 ante.

6 *Ibid* Sch A1 para 8(3) (as added: see note 1 supra).

7 *Ibid* Sch A1 para 8(4) (as added: see note 1 supra).

8 For the meaning of 'voluntary arrangement' see para 71 ante. As to the approval of voluntary arrangements see para 96 et seq post.

9 Insolvency Act 1986 Sch A1 para 8(7) (as added: see note 1 supra). See further para 103 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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81. Notification and advertisement of end of moratorium.

When a moratorium¹ comes to an end² the nominee³ must forthwith give notice of the ending of the moratorium to the registrar of companies⁴, the court⁵, the company⁶ and any creditor of the company of whose claim he is aware⁷. The nominee must also forthwith advertise the coming to an end of the moratorium once in the Gazette and once in such newspaper as he thinks most appropriate for ensuring that the moratorium's coming to an end comes to the notice of the company's creditors⁸. If the nominee without reasonable excuse fails to comply with any of these requirements he is liable to a fine⁹.

1 le a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the circumstances in which a moratorium comes to an end see para 80 ante.

3 As to the meaning of 'the nominee' see para 75 note 4 ante.

4 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

5 For the meaning of 'the court' see para 4 ante.

6 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

7 Insolvency Act 1986 Sch A1 para 11(1)(b) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.42(2) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). The nominee's notification must specify the date on which the moratorium came into force: Insolvency Rules 1986, SI 1986/1925, r 1.42(2) (as so added).

8 Insolvency Act 1986 Sch A1 para 11(1)(c) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.42(1) (as added: see note 7 supra). The advertisement must specify the date on which the moratorium came to end: r 1.42(1) (as so added). If the nominee without reasonable excuse fails to comply with this requirement he is liable to a fine: Insolvency Act 1986 Sch A1 para 11(2) (as so added). As to the Gazette, and the gazetting of notices, see para 1048 post.

9 Insolvency Act 1986 Sch A1 para 11(2) (as added: see note 1 supra). Such a fine may not exceed one-fifth of the statutory maximum: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

81 Notification and advertisement of end of moratorium

TEXT AND NOTE 8--SI 1986/1925 r 1.42(1) substituted: SI 2009/642. SI 1986/1925 r 1.42(1A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iii) Commencement, Duration and Extension/82. Extension of moratorium.

82. Extension of moratorium.

Where a moratorium¹ is in force in relation to a company², a meeting of the company or its creditors summoned by the nominee³ which resolves that it be adjourned or further adjourned may resolve that the moratorium be extended or further extended⁴ with or without conditions⁵. Before a decision is taken in relation to a proposal to extend or further extend the moratorium, the nominee must inform the meeting at which the extension is proposed of what he has done in relation to his duty to monitor the company's affairs⁶ and the costs of his actions for the company⁷ and of what he intends to do to continue to comply with that duty if the moratorium is extended or further extended and the expected cost of his actions for the company⁸.

A decision with respect to the extension or further extension of a moratorium or the approval of the expected cost of the nominee's⁹ intended actions has effect if, in accordance with the Insolvency Rules 1986¹⁰, it has been taken either by both the company and creditors' meetings¹¹ or has been taken only by the creditors' meeting¹², although if the decision taken by the creditors' meeting differs from one taken by the company meeting a member¹³ of the company may apply to the court¹⁴ for an order that the company meeting decision have effect instead of the creditor meeting decision¹⁵. When a decision to extend or further extend a moratorium so takes effect, the nominee must notify the registrar of companies and the court¹⁶. If the moratorium is extended or further extended by order of the court, the nominee must forthwith after receiving a copy of the order give notice, containing an office copy of the order, to the registrar¹⁷. If the nominee without reasonable excuse fails to comply with these requirements he is liable to a fine¹⁸.

If a decision not to approve the expected costs of the nominee's intended action has effect, the moratorium comes to an end¹⁹. A meeting may also resolve that a moratorium which has been extended or further extended be brought to an end before the end of the period of the extension or further extension²⁰.

1 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 Ie a meeting summoned under the Insolvency Act 1986 Sch A1 para 29 (as added) (see paras 96-97 post). As to the meaning of 'the nominee' see para 75 note 4 ante.

4 Ibid Sch A1 para 32(1) (as added: see note 1 supra). The moratorium may not be extended or further extended to a day later than the period of two months which begins: (1) where both meetings summoned by the nominee are first held on the same day, on that day (Sch A1 para 32(2)(a) (as so added)); or (2) in any other case, with the day on which the later of those meetings is first held (Sch A1 para 32(2)(b) (as so added)). The Secretary of State may by order increase or reduce the period for the time being specified: Sch A1 para 32(7) (as so added). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante. As to the making of orders under Sch A1 (as added and amended) see para 73 note 9 ante.

5 Ibid Sch A1 para 32(1) (as added: see note 1 supra). The conditions which may be imposed when a moratorium is extended or further extended include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement: Sch A1 para 33(1) (as so added). For the meaning of 'voluntary arrangement' see para 71 ante. A person may be appointed as a replacement nominee only if he submits to the court, and there is filed in that court, a statement indicating his consent to act: Sch A1 para 33(2) (as so added); Insolvency Rules

1986, SI 1986/1925, r 1.45(3) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). A person who is appointed as a replacement nominee must forthwith give notice of his appointment to the registrar of companies (Insolvency Rules 1986, SI 1986/1925, r 1.46(a) (as so added)), the court (if he was not appointed by the court) (r 1.46(b) (as so added)), and the person whom he has replaced as nominee (r 1.46(c) (as so added)). For the meaning of 'the court' see para 4 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. See also note 8 infra.

6 le under the Insolvency Act 1986 Sch A1 para 24 (as added) (see para 84 post).

7 Ibid Sch A1 para 32(3)(a) (as added: see note 1 supra).

8 Ibid Sch A1 para 32(3)(b) (as added: see note 1 supra). Where, in accordance with this requirement the nominee informs a meeting of the expected cost of his intended actions, the meeting must resolve whether or not to approve that expected cost: Sch A1 para 32(4) (as so added). At any meeting where it is proposed to appoint a replacement nominee as a condition of extending or further extending the moratorium (see the text and note 5 supra) the duty imposed by Sch A1 para 32(3)(b) (as added) is instead imposed on the person proposed as replacement nominee (Sch A1 para 33(3)(a) (as so added)) and Sch A1 para 32(4) (as added) applies as if references to the nominee were references to that person (Sch A1 para 33(3)(b) (as so added)).

9 At any meeting where it is proposed to appoint a replacement nominee as a condition of extending or further extending the moratorium (see the text and note 5 supra) these provisions apply as if references to the nominee were references to that person: ibid Sch A1 para 33(3)(b) (as added: see note 1 supra).

10 le the Insolvency Rules 1986, SI 1986/1925 (as amended): see generally see para 1041 et seq post.

11 le meetings summoned under the Insolvency Act 1986 Sch A1 para 29 (as added): see para 96 et seq post.

12 Ibid Sch A1 para 36(1)(b), (e), (2) (as added: see note 1 supra).

13 As to the meaning of 'member' see para 72 note 9 ante.

14 No application may be made after the end of the period of 28 days beginning with the day on which the decision was taken by the creditors' meeting or, where the decision of the company meeting was taken on a later day, that day: Insolvency Act 1986 Sch A1 para 36(4) (as added: see note 1 supra). In relation to a regulated company (see para 73 note 2 ante), the Financial Services Authority is entitled to be heard on any application: Sch A1 para 44(10) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

15 Ibid Sch A1 para 36(3), (5)(a) (as added: see note 1 supra). The court may also make any such other order as it thinks fit: Sch A1 para 36(5)(b) (as so added).

16 Ibid Sch A1 para 34(1) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.41(1) (as added: see note 5 supra). The nominee's notification must specify the new expiry date of the moratorium: r 1.41(1) (as so added).

17 Insolvency Act 1986 Sch A1 para 34(2) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.41(2) (as added: see note 5 supra).

18 Insolvency Act 1986 Sch A1 para 34(3) (as added: see note 1 supra). Such a fine may not exceed one-fifth of the statutory maximum: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

19 Insolvency Act 1986 Sch A1 para 32(5) (as added: see note 1 supra). At any meeting where it is proposed to appoint a replacement nominee as a condition of extending or further extending the moratorium (see the text and note 5 supra) these provisions apply as if references to the nominee were references to that person: Sch A1 para 33(3)(b) (as so added).

20 Ibid Sch A1 para 32(6) (as added: see note 1 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

82 Extension of moratorium

TEXT AND NOTE 17--Insolvency Act 1986 Sch A1 para 34(2) amended: SI 2009/1941. SI 1986/1925 r 1.41(2) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iii) Commencement, Duration and Extension/83. Moratorium committee.

83. Moratorium committee.

Where a moratorium¹ is in force in relation to a company², a meeting of the company or its creditors summoned by the nominee³ which resolves that the moratorium be extended or further extended⁴ may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting⁵.

A decision with respect to the establishment of a moratorium committee has effect if it has been taken either by both the company and creditors' meetings or by the creditors' meeting only⁶, although if the decision taken by the creditors' meeting differs from one taken by the company meeting a member⁷ of the company may apply to the court⁸ for an order that the company meeting decision have effect instead of the creditor meeting decision⁹.

The committee will cease to exist when the moratorium comes to an end¹⁰.

1 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 I.e. a meeting summoned under the Insolvency Act 1986 Sch A1 para 29 (as added) (see paras 96-97 post). As to the meaning of 'the nominee' see para 75 note 4 ante.

4 As to such meetings and resolutions see para 82 ante.

5 Insolvency Act 1986 Sch A1 para 35(1) (as added: see note 1 supra). The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions: Sch A1 para 35(2) (as so added). Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions must be reimbursed by the nominee: Sch A1 para 35(3) (as so added). In relation to a regulated company (see para 73 note 2 ante) a person appointed for the purpose by the Financial Services Authority is entitled to attend and participate in (but not to vote at) any meeting of a moratorium committee: Sch A1 para 44(9)(b) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

6 Ibid Sch A1 para 36(1)(d), (2) (as added: see note 1 supra).

7 As to the meaning of 'member' see para 72 note 9 ante.

8 For the meaning of 'the court' see para 4 ante. No application may be made after the end of the period of 28 days beginning with the day on which the decision was taken by the creditors' meeting or, where the decision of the company meeting was taken on a later day, that day: Insolvency Act 1986 Sch A1 para 36(4) (as added: see note 1 supra). In relation to a regulated company, the Financial Services Authority is entitled to be heard on any application: Sch A1 para 44(10) (as so added).

9 Ibid Sch A1 para 36(3), (5)(a) (as added: see note 1 supra). The court may also make any such other order as it thinks fit: Sch A1 para 36(5)(b) (as so added).

10 Ibid Sch A1 para 35(4) (as added: see note 1 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iv) Role of the Nominee/84. Monitoring of company's activities.

(iv) Role of the Nominee

84. Monitoring of company's activities.

During a moratorium¹, the nominee² is required to monitor the company's³ affairs for the purpose of forming an opinion as to whether: (1) the proposed voluntary arrangement⁴ or, if he has received notice of proposed modifications⁵, the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented⁶; and (2) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business⁷. The directors⁸ must submit to the nominee any information necessary to enable him to form his opinion which he requests from them⁹.

The nominee is also required to summon and conduct meetings¹⁰.

1 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 As to the meaning of 'the nominee' see para 75 note 4 ante.

4 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post.

5 Ie under the Insolvency Act 1986 Sch A1 para 37(1) (as added) (see para 104 note 4 post). 'Modifications' includes additions, alterations and omissions; and cognate expressions are to be construed accordingly: s 436.

6 Ibid Sch A1 para 24(1)(a) (as added: see note 1 supra).

7 Ibid Sch A1 para 24(1)(b) (as added: see note 1 supra). The reference in the text to the company's business is a reference to that business as the company proposes to carry it on during the remainder of the moratorium: Sch A1 para 24(4) (as so added).

8 As to the meaning of 'director' see para 5 note 2 ante.

9 Insolvency Act 1986 Sch A1 para 24(2) (as added: see note 1 supra). In forming his opinion on any of the matters mentioned in heads (1) and (2) in the text, the nominee is entitled to rely on the information submitted to him by the directors unless he has reason to doubt its accuracy: Sch A1 para 24(3) (as so added).

10 See para 96 et seq post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iv) Role of the Nominee/85. Withdrawal of consent to act.

85. Withdrawal of consent to act.

The nominee¹ must withdraw his consent to act if, and only if, at any time during a moratorium²:

- 121 (1) he forms the opinion that the proposed voluntary arrangement³ or, if he has received notice of proposed modifications⁴, the proposed arrangement with those modifications no longer has a reasonable prospect of being approved and implemented or the company⁵ will not have sufficient funds available to it during the remainder of the moratorium to enable it to carry on its business⁶;
- 122 (2) he becomes aware that on the date of filing⁷ the company was not eligible for a moratorium⁸; or
- 123 (3) the directors⁹ fail to comply with their duty to submit to the nominee any information necessary to enable him to form his opinion which he requests from them¹⁰.

The nominee may not other than in these circumstances withdraw his consent to act¹¹. If the nominee withdraws his consent to act, the moratorium comes to an end¹²; and the nominee must forthwith give notice of his withdrawal and the reason for withdrawing his consent to act to the court¹³, the registrar of companies¹⁴, the company and any creditor of the company of whose claim he is aware¹⁵.

1 As to the meaning of 'the nominee' see para 75 note 4 ante.

2 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post.

4 Ie under the Insolvency Act 1986 Sch A1 para 37(1) (as added) (see para 104 note 4 post). As to the meaning of 'modifications' see para 84 note 5 ante.

5 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

6 Insolvency Act 1986 Sch A1 para 25(1), (2)(a) (as added: see note 2 supra). The reference in the text to the company's business is a reference to that business as the company proposes to carry it on during the remainder of the moratorium: Sch A1 para 25(3) (as so added).

7 For the meaning of 'the date of filing' see para 73 note 6 ante.

8 Insolvency Act 1986 Sch A1 para 25(1), (2)(b) (as added: see note 2 supra). As to eligibility for a moratorium see paras 73-74 ante.

9 As to the meaning of 'director' see para 5 note 2 ante.

10 Insolvency Act 1986 Sch A1 para 25(1), (2)(c) (as added: see note 2 supra).

11 Ibid Sch A1 para 25(1) (as added: see note 2 supra).

12 Ibid Sch A1 para 25(4) (as added: see note 2 supra).

13 For the meaning of 'the court' see para 4 ante.

14 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

15 Insolvency Act 1986 Sch A1 para 25(5) (as added: see note 2 supra); Insolvency Rules 1986, SI 1986/1925, r 1.44 (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). If the nominee without reasonable excuse fails to comply with this requirement he will be liable to a fine: Insolvency Act 1986 Sch A1 para 25(6) (as so added). Such a fine may not exceed one-fifth of the statutory maximum: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iv) Role of the Nominee/86. Challenging of nominee's actions.

86. Challenging of nominee's actions.

If any creditor, director¹ or member of the company² or any other person affected by a moratorium³ is dissatisfied by any act, omission or decision of the nominee⁴ during a moratorium he may, at any time during the moratorium or after it has ended, apply to the court⁵. On such an application the court may confirm, reverse or modify any act or decision of the nominee⁶, give him directions⁷ or make such other order as it thinks fit⁸.

Where there are reasonable grounds for believing that as a result of any act, omission or decision of the nominee during the moratorium the company has suffered loss, but the company does not intend to pursue any claim it may have against the nominee, then any creditor of the company may, at any time during the moratorium or after it has ended, apply to the court⁹. On such an application the court may, unless it is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable¹⁰, order the company to pursue any claim against the nominee¹¹, authorise any creditor to pursue such a claim in the name of the company¹², or make such order with respect to such a claim as it thinks fit¹³.

1 As to the meaning of 'director' see para 5 note 2 ante.

2 As to the meaning of 'member' see para 72 note 9 ante. As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

4 As to the meaning of 'the nominee' see para 75 note 4 ante.

5 Insolvency Act 1986 Sch A1 para 26(1), (2) (as added: see note 3 supra). A person who intends to make an application to the court pursuant to this provision must give the nominee at least seven days' notice of his application: Insolvency Rules 1986, SI 1986/1925, r 1.47 (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). For the meaning of 'the court' see para 4 ante.

In relation to a regulated company (see para 73 note 2 ante), the persons who may apply to the court include the Financial Services Authority: Insolvency Act 1986 Sch A1 para 44(4) (as so added). If a person other than the Authority applies to the court, the Authority is entitled to be heard on the application: Sch A1 para 44(5) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

6 Ibid Sch A1 para 26(3)(a) (as added: see note 3 supra).

7 Ibid Sch A1 para 26(3)(b) (as added: see note 3 supra).

8 Ibid Sch A1 para 26(3)(c) (as added: see note 3 supra). Such an order may, among other things, bring the moratorium to an end and make such consequential provision as the court thinks fit: Sch A1 para 26(4) (as so added).

9 Ibid Sch A1 para 27(1) (as added: see note 3 supra). On such an application the court must have regard to the interests of the members and creditors of the company generally: Sch A1 para 27(5) (as so added). A person who intends to make an application to the court pursuant to this provision must give the nominee at least seven days' notice of his application: Insolvency Rules 1986, SI 1986/1925, r 1.47 (as added: see note 5 supra).

In relation to a regulated company, the persons who may apply to the court include the Financial Services Authority: Insolvency Act 1986 Sch A1 para 44(6) (as so added). If a person other than the Authority applies to the court, the Authority is entitled to be heard on the application: Sch A1 para 44(7) (as so added).

10 Ibid Sch A1 para 27(3) (as added: see note 3 supra).

11 Ibid Sch A1 para 27(3)(a) (as added: see note 3 supra).

12 Ibid Sch A1 para 27(3)(b) (as added: see note 3 supra).

13 Ibid Sch A1 para 27(3)(c) (as added: see note 3 supra). Any such order may, among other things, impose conditions on any authority given to pursue a claim (Sch A1 para 27(4)(a) (as so added)), direct the company to assist in the pursuit of a claim (Sch A1 para 27(4)(b) (as so added)), make directions with respect to the distribution of anything received as a result of the pursuit of a claim (Sch A1 para 27(4)(c) (as so added)), or bring the moratorium to an end and make such consequential provision as the court thinks fit (Sch A1 para 27(4)(d) (as so added)).

UPDATE

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(iv) Role of the Nominee/87. Replacement of nominee by court.

87. Replacement of nominee by court.

If the nominee¹ has failed to comply with any duty imposed on him² or has died, the directors³ may apply to the court⁴ for a direction that the nominee be replaced as such by another person qualified to act as an insolvency practitioner⁵ or authorised to act as nominee in relation to the voluntary arrangement⁶. If it is impracticable or inappropriate for the nominee to continue as such, the directors or the nominee may apply for such a direction⁷.

A person may be appointed as a replacement nominee under these provisions only if he submits to the court, and there is filed in that court, a statement indicating his consent to act⁸. A person who is appointed as a replacement nominee under these provisions must forthwith give notice of his appointment to the registrar of companies⁹ and the person whom he has replaced as nominee¹⁰.

1 As to the meaning of 'the nominee' see para 75 note 4 ante.

2 Ie any duty imposed under the Insolvency Act 1986 Sch A1 (as added and amended) (see para 73 et seq ante).

3 As to the meaning of 'director' see para 5 note 2 ante.

4 For the meaning of 'the court' see para 4 ante.

5 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

6 Insolvency Act 1986 Sch A1 para 28(1)(a) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). For the meaning of 'voluntary arrangement' see para 71 ante. Where the directors intend to make an application to the court for the nominee to be replaced, they must give to the nominee at least seven days' notice of their application: Insolvency Rules 1986, SI 1986/1925, r 1.45(1) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

7 Insolvency Act 1986 Sch A1 para 28(1)(b) (as added: see note 6 supra). As to the making of applications by directors see note 6 supra; where the nominee intends to make an application to the court to be replaced, he must give to the directors at least seven days' notice of his application: Insolvency Rules 1986, SI 1986/1925, r 1.45(2) (as added: see note 6 supra).

8 Insolvency Act 1986 Sch A1 para 28(3) (as added: see note 6 supra); Insolvency Rules 1986, SI 1986/1925, r 1.45(3) (as added: see note 6 supra).

9 Ibid r 1.46(a) (as added: see note 6 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

10 Ibid r 1.46(c) (as added: see note 6 supra).

UPDATE

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(v) Effects of Moratorium

88. Effect of moratorium on creditors.

During the period for which a moratorium¹ is in force for a company²:

- 124 (1) no petition (other than an excepted petition³) may be presented for the winding up of the company⁴;
- 125 (2) no meeting of the company may be called or requisitioned except with the consent of the nominee⁵ or the leave of the court and subject, where the court gives leave, to such terms as the court may impose⁶;
- 126 (3) no resolution may be passed or order made for the winding up of the company⁷;
- 127 (4) no administration application may be made in respect of the company⁸;
- 128 (5) no administrator may be appointed⁹ to the company¹⁰;
- 129 (6) no administrative receiver¹¹ of the company may be appointed¹²; and
- 130 (7) no legal procedures may be pursued in respect of the company's property or premises except with the leave of the court¹³.

Where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force and the conditions for the holder of the charge to give a notice causing either the crystallisation of the charge or the imposition¹⁴ of any restriction on the disposal of any property of the company are met at any time, that notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end¹⁵. If, however, any other event occurs at any time which (apart from this provision) would have the effect of causing either the crystallisation of the charge or the imposition of any such restriction, that event will not have the effect in question at that time but if notice of the event is given to the company by the charge holder as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given¹⁶.

1 le a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 Insolvency Act 1986 Sch A1 para 12(4) (as added: see note 1 supra). For these purposes, 'excepted petition' means a petition under the Insolvency Act 1986 s 124A (as added and amended) (winding up on grounds of public interest) (see para 444 post) (Insolvency Act 1986 Sch A1 para 12(5)(a) (as so added)), the Financial Services Act 1986 s 72(1)(b) (repealed) (winding up companies carrying on investment business) (Insolvency Act 1986 Sch A1 para 12(5)(b) (as so added)), the Banking Act 1987 s 92(1)(b) (repealed) (winding up authorised institutions) (Insolvency Act 1986 Sch A1 para 12(5)(c) (as so added)), and the Financial Services and Markets Act 2000 s 367(3)(b) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497 (Insolvency Act 1986 Sch A1 para 12(5)(d) (as so added; and amended by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 30)).

4 Insolvency Act 1986 Sch A1 para 12(1)(a) (as added: see note 1 supra). Where a petition other than an excepted petition for the winding up of the company has been presented before the beginning of the moratorium, s 127 (avoidance of property distributions) (see para 700 post) does not apply in relation to any

disposition of property, transfer of shares or alteration in status made during the moratorium or at any time before the period of 28 days beginning with the first day on which each of the reports of the meetings of the company and creditors has been made to the court: Sch A1 para 12(2) (as so added). For the meaning of 'the court' see para 4 ante.

5 As to the meaning of 'the nominee' see para 75 note 4 ante.

6 Insolvency Act 1986 Sch A1 para 12(1)(b) (as added: see note 1 supra). This provision does not apply in relation to any proceedings on an excepted petition (see note 3 supra) which has been presented before the beginning of the moratorium or is presented during the moratorium: Sch A1 para 12(4) (as so added).

7 Ibid Sch A1 para 12(1)(c) (as added: see note 1 supra). This provision does not apply in relation to any proceedings on an excepted petition (see note 3 supra) which has been presented before the beginning of the moratorium or is presented during the moratorium: Sch A1 para 12(4) (as so added).

8 Ibid Sch A1 para 12(1)(d) (Sch A1 as added (see note 1 supra); and Sch A1 para 12(1)(d) substituted, and Sch A1 para 12(1)(da) added, by the Enterprise Act 2002 s 248, Sch 17, paras 9, 37(1), (3)). If a special administration regime (see para 145 post) has effect, or a petition for an administration order has been presented before 15 September 2003, this prohibition is expressed as being that no petition for an administration order in relation to the company may be presented, as opposed to being that no administration application may be made in respect of the company: Insolvency Act 1986 Sch A1 para 12(1)(d) (as so added); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

9 Ie pursuant to the Insolvency Act 1986 Sch B1 paras 14, 22 (as added) (see paras 228 et seq, 236 et seq post).

10 Ibid Sch A1 para 12(1)(da) (as added: see notes 1, 8 supra). This provision is inapplicable if a special administration regime has effect or in relation to a company in respect of which a petition for an administration order has been presented before 15 September 2003: Insolvency Act 1986 Sch A1 para 12 (as so added); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

11 For the meaning of 'administrative receiver' see para 8 note 2 ante.

12 Insolvency Act 1986 Sch A1 para 12(1)(e) (as added: see note 1 supra).

13 Ie no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises (ibid Sch A1 para 12(1)(f) (as added: see note 1 supra)), no other steps may be taken to enforce any security over the company's property or to repossess goods in the company's possession under any hire-purchase agreement (Sch A1 para 12(1)(g) (as so added)), and no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied (Sch A1 para 12(1)(h) (as so added)), except with the leave of the court and subject to such terms as the court may impose. Where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force, application may not be made for leave under Sch A1 para 12(1)(g) (as added) or Sch A1 para 12(1)(h) (as added) with a view to obtaining the crystallisation of the charge or the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company: Sch A1 para 13(5) (as so added). Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company: Sch A1 para 14 (as so added).

14 Ie by virtue of provision in the instrument creating the charge: ibid Sch A1 para 13(4)(b) (as added: see note 1 supra).

15 Ibid Sch A1 para 13(1), (2), (4) (as added: see note 1 supra). As to circumstances where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force and steps are required to be taken to enforce any security over company property or to repossess goods in the company's possession under any hire-purchase agreement, or to take, commence or continue any other proceedings, or to levy distress, see note 13 supra. A provision in an instrument creating a floating charge is void if it provides for obtaining a moratorium or anything done with a view to obtaining a moratorium (including any preliminary decision or investigation) to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver: Sch A1 para 43(1) (as so added). For these purposes, 'receiver' includes a manager and a person who is appointed both receiver and manager: Sch A1 para 43(2) (as so added).

16 Ibid Sch A1 para 13(1), (3), (4) (as added: see note 1 supra).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(v) Effects of Moratorium/89. Company invoices and obtaining of credit.

89. Company invoices and obtaining of credit.

Where a moratorium¹ is in force in relation to a company² every invoice, order for goods or business letter which is issued by or on behalf of the company and on or in which the company's name appears must also contain the nominee's³ name and a statement that the moratorium is in force for the company⁴; and the company may not obtain credit⁵ to the extent of £250⁶ or more from a person who has not been informed that a moratorium is in force in relation to the company⁷. However, the fact that a company enters into a transaction in contravention of any of these provisions does not make the transaction void or make it to any extent unenforceable against the company⁸.

1 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 As to the meaning of 'the nominee' see para 75 note 4 ante.

4 Insolvency Act 1986 Sch A1 paras 15(1), 16(1) (as added: see note 1 supra). If default is made in complying with this requirement, the company and any officer of the company who, without reasonable excuse, authorised or permitted the default is subject to a fine not exceeding one-fifth of the statutory maximum: s 430, Sch A1 para 16(2), (3) (as so added), Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante. For the meaning of 'officer' see para 690 post.

5 The reference to a company obtaining credit includes cases where goods are bailed to the company under a hire-purchase agreement or agreed to be sold to the company under a conditional sale agreement and where the company is paid in advance (whether in money or otherwise) for the supply of goods or services: Insolvency Act 1986 Sch A1 para 17(2) (as added: see note 1 supra).

6 This sum is subject to increase or reduction by order of the Secretary of State: *ibid* s 417A(1)(a) (s 417A added by the Insolvency Act 2000 Sch 1 paras 1, 10); Insolvency Act 1986 Sch A1 para 17(4) (as added: see note 1 supra). Such an order is made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (s 417A(3) (as so added)) and may contain such transitional provisions as may appear to the Secretary of State to be necessary or expedient (s 417A(2) (as so added)). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante.

7 *Ibid* Sch A1 para 17(1) (as added: see note 1 supra). Where a company obtains credit in contravention of this prohibition, the company is liable to a fine, which may not on summary conviction exceed the statutory maximum; and if any officer of the company knowingly and wilfully authorises or permits the contravention he is liable: (1) on indictment to a fine or a term of imprisonment not exceeding two years, or both; or (2) on summary conviction to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum: Sch A1 para 17(3) (as so added), Sch 10 (as added: see note 4 supra).

8 *Ibid* Sch A1 para 15(2) (as added: see note 1 supra).

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(v) Effects of Moratorium/90. Disposals of company property and payments.

90. Disposals of company property and payments.

A company¹ in relation to which a moratorium² is in force may dispose of any of its property if the disposal is made in the ordinary way of the company's business³; otherwise, such a company may dispose of any of its property only if there are reasonable grounds for believing that the disposal will benefit the company⁴ and the disposal is approved by the moratorium committee⁵ or, where there is no such committee, by the nominee⁶. The company may not, however, make any payment⁷ in respect of any debt or other liability of the company in existence before the beginning of the moratorium unless there are reasonable grounds for believing that the payment will benefit the company⁸ and the disposal is approved by the moratorium committee or, where there is no such committee, by the nominee⁹. However, the fact that a company enters into a transaction in contravention of any of these provisions does not make the transaction void or make it to any extent unenforceable against the company¹⁰.

1 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 Ibid Sch A1 paras 16(1), 18(2) (as added: see note 2 supra).

4 Ibid Sch A1 para 18(1)(a) (as added: see note 2 supra). If the company makes a disposal in contravention of Sch A1 para 18(1) (as added) otherwise than in pursuance of an order of the court the company is liable to a fine, which may not on summary conviction exceed the statutory maximum; and if any officer of the company authorises or permits the contravention, without reasonable excuse, he is liable: (1) on indictment to a term of imprisonment not exceeding two years or a fine, or both; or (2) on summary conviction to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum, or both: s 430, Sch A1 para 18(3) (as so added), Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). For the meaning of 'the court' see para 4 ante. For the meaning of 'officer' see para 690 post. As to the statutory maximum see para 10 note 1 ante.

5 As to the moratorium committee see para 83 ante.

6 Insolvency Act 1986 Sch A1 para 18(1)(b) (as added: see note 2 supra). As to the meaning of 'the nominee' see para 75 note 4 ante. See note 4 supra.

7 I.e. any payment other than a payment required as a condition of any consent or leave for the company to dispose of charged property required by ibid Sch A1 para 20(6) (as added) (see para 91 post): Sch A1 para 19(2) (as added: see note 2 supra).

8 Ibid Sch A1 para 19(1)(a) (as added: see note 2 supra). If the company makes a payment in contravention of Sch A1 para 19(1) (as added) otherwise than in pursuance of an order of the court, the company is liable to a fine, which on summary conviction may not exceed the statutory maximum; and if any officer of the company authorises or permits the contravention he will be liable: (1) on indictment to a term of imprisonment not exceeding two years or a fine, or both; or (2) on summary conviction to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum, or both: Sch A1 para 19(3) (as so added), Sch 10 (as added: see note 4 supra).

9 Ibid Sch A1 para 19(1)(b) (as added: see note 2 supra). See note 8 supra.

10 Ibid Sch A1 para 15(2) (as added: see note 2 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

90 Disposals of company property and payments

NOTE 3--1986 Act Sch A1 para 16(1) substituted: SI 2008/1897.

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91. Disposal of charged property.

A company¹ in relation to which a moratorium² is in force may dispose of property³ which is subject to a security as if it were not subject to the security⁴, and may dispose of any goods which are in its possession under a hire-purchase agreement as if all rights of the owner under the agreement were vested in the company⁵, provided the holder of the security or, as the case may be, the owner of the goods consents or the court⁶ gives leave⁷. Where property⁸ or goods are so disposed of, it must be a condition of any consent or leave given for the disposal that the net proceeds of the disposal and, where those proceeds are less than such amount as may be agreed or determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency, be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement⁹.

If a company without any consent or leave under these provisions disposes of any of its property which is subject to a security or any goods in its possession under a hire-purchase agreement otherwise than in accordance with the terms of the security or agreement, or fails to comply with any requirement imposed in relation to the disposal of such property, it is liable to a fine¹⁰. However, the fact that a company enters into a transaction in contravention of any of these provisions does not make the transaction void or make it to any extent unenforceable against the company¹¹.

1 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 I.e. any property which is not subject to a market charge, a system-charge or a collateral security charge: Insolvency Act 1986 Sch A1 para 23(5) (as added (see note 2 supra); and amended by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 28(1), (4)(c)). For the meaning of 'market charge' see para 73 note 15 ante. For the meaning of 'system charge' see para 73 note 16 ante. For these purposes, 'collateral security charge' means a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979: Insolvency Act 1986 Sch A1 paras 1, 23(6) (as so added). Special provision is made in respect of property so subject: see para 89 ante.

4 Ibid Sch A1 paras 15(1), 20(1)(a), (2) (as added: see note 2 supra). Where property subject to a security which, as created, was a floating charge is so disposed of, the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security: Sch A1 para 20(4) (as so added). As to the provisions relating to moratoriums which may not be included in floating charge instruments see para 88 note 15 ante.

5 Ibid Sch A1 para 20(1)(b), (3) (as added: see note 2 supra).

6 For the meaning of 'the court' see para 4 ante.

7 Insolvency Act 1986 Sch A1 para 20(2), (3) (as added: see note 2 supra). Where a company makes an application to the court for leave to dispose of property of the company which is subject to a security or goods in possession of the company under a hire-purchase agreement, the court must fix a venue for the hearing of the application and the company must forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement: Insolvency Rules 1986, SI 1986/1925, r 1.43(1), (2) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the

nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). For these purposes, references to the 'venue' for any proceeding or attendance before the court, or for a meeting, are references to the time, date and place for the proceeding, attendance or meeting: Insolvency Rules 1986, SI 1986/1925, r 13.6. If an order is made, the company must forthwith give notice of it to that person or owner: r 1.43(3) (as so added). The court must send two sealed copies of the order to the company, who must send one of them to that person or owner: r 1.43(4) (as so added). Where the court gives leave for a disposal the directors must within 14 days after leave is given send to the registrar of companies an office copy of the order giving leave: Insolvency Act 1986 Sch A1 para 20(8) (as so added). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. If the directors without reasonable excuse fail to comply with this requirement they are liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum: s 430, Sch A1 para 20(9) (as so added), Sch 10 (added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

In relation to a regulated company (see para 73 note 2 ante), the Financial Services Authority is entitled be heard on any application to the court for leave under the Insolvency Act 1986 Sch A1 para 20(2), (3) (as added): Sch A1 para 44(3) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

8 Ie property subject to a security other than a security which, as created, was a floating charge: *ibid* Sch A1 para 20(5)(a) (as added: see note 2 supra).

9 *Ibid* Sch A1 para 20(5), (6) (as added: see note 2 supra). Where a condition relates to two or more securities, that condition requires the net proceeds of the disposal and, where those proceeds are less than such amount as may be agreed or determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency, to be applied towards discharging the sums secured by those securities in the order of their priorities: Sch A1 para 20(7) (as so added).

10 *Ibid* Sch A1 para 22(1) (as added: see note 2 supra). Such fine may not, on summary conviction, exceed the statutory maximum: Sch 10 (as added: see note 7 supra). If any officer of the company without reasonable excuse authorises or permits any such disposal or failure to comply he is liable: (1) on indictment to a term of imprisonment not exceeding two years or a fine, or both; or (2) on summary conviction, to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum, or both: Sch A1 para 22(2) (as so added), Sch 10 (as so added). For the meaning of 'officer' see para 690 post.

11 *Ibid* Sch A1 para 15(2) (as added: see note 2 supra).

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91 Disposal of charged property

NOTE 7--Insolvency Act 1986 Sch A1 para 20(8), Sch 10 amended: SI 2009/1941. SI 1986/1925 r 13.6 amended: SI 2010/686.

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92. Market contracts.

A company¹ in relation to which a moratorium² is in force is liable to a fine³ if it:

- 131 (1) enters into a market contract⁴;
- 132 (2) gives a transfer order⁵;
- 133 (3) grants a market charge⁶ or a system-charge⁷; or
- 134 (4) provides any collateral security⁸.

The fact that a company enters into a transaction in contravention of any of these provisions does not, however, make the transaction void or make it to any extent unenforceable against the company⁹.

1 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 Insolvency Act 1986 Sch A1 paras 15(1), 23(1)(a) (as added: see note 2 supra). Such fine may not, on summary conviction, exceed the statutory maximum: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). Any officer of the company who, without reasonable excuse, authorised or permitted the company to enter into the transaction is liable: (1) on indictment to a term of imprisonment not exceeding two years or a fine, or both; or (2) on summary conviction to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum, or both: Insolvency Act 1986 Sch A1 para 23(1)(b) (as so added), Sch 10 (as so added). For the meaning of 'officer' see para 690 post. As to the statutory maximum see para 10 note 1 ante.

4 Ibid Sch A1 para 23(2)(a) (as added (see note 2 supra); and amended by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 28(1), (4)(a)). For the meaning of 'market contract' see para 73 note 14 ante.

5 Insolvency Act 1986 Sch A1 para 23(2)(b) (as added: see note 2 supra). For these purposes 'transfer order' means a transfer order within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979: Insolvency Act 1986 Sch A1 paras 1, 23(6) (as so added).

6 For the meaning of 'market charge' see para 73 note 15 ante.

7 Insolvency Act 1986 Sch A1 para 23(2)(c) (as added (see note 2 supra); and amended by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 28(1), (4)(b)). For the meaning of 'system charge' see para 73 note 16 ante.

8 Insolvency Act 1986 Sch A1 para 23(2)(d) (as added: see note 2 supra). For these purposes, 'collateral security' means collateral security within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979: Insolvency Act 1986 Sch A1 paras 1, 23(6) (as so added).

9 Ibid Sch A1 paras 15(2), 23(3) (as added: see note 2 supra). Where a company for which a moratorium is in force enters into such a transaction, nothing done by or in pursuance of the transaction is to be treated as done in contravention of Sch A1 para 12(1)(g) (as added) (see para 88 ante), Sch A1 para 14 (as added) (see para 88 ante) or Sch A1 paras 16-22 (as added and amended) (see paras 89-91 ante): Sch A1 para 23(4) (as so added).

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93. Power to challenge directors' actions.

Where a moratorium¹ is or has been in force any creditor or member of the company² may apply to the court³ for an order on the ground:

- 135 (1) that the company's affairs, business and property are being or have been managed by the directors⁴ in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or some part of its creditors or members (including at least the petitioner)⁵; or
- 136 (2) that any actual or proposed act or omission of the directors is or would be so prejudicial⁶.

On such an application the court may make such order as it thinks fit for giving relief in respect of the matters complained of⁷, adjourn the hearing conditionally or unconditionally⁸, or make an interim order or any other order it thinks fit⁹.

1 le a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'member' see para 72 note 9 ante. As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante. In relation to a regulated company (see para 73 note 2 ante), the persons who may apply to the court include the Financial Services Authority: Insolvency Act 1986 Sch A1 para 44(15) (as added: see note 1 supra). If a person other than the Authority applies to the court, the Authority is entitled to be heard on that application: Sch A1 para 44(16) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

Where: (1) the appointment of an administrator has effect in relation to the company and the appointment was in pursuance of an administration application made, or a notice of intention to appoint filed, before the moratorium came into force; or (2) the company is being wound up in pursuance of a petition presented before the moratorium came into force, no application for an order may be made by a creditor or member of the company but such an application may be made instead by the administrator or, as the case may be, the liquidator: Sch A1 para 40(7), (8) (Sch A1 as so added; Sch A1 para 40(7) substituted, and Sch A1 para 40(8) added, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 37(1), (4), and the Insolvency Act 1986 Sch A1 para 40(7)(a) further substituted by the Enterprise Act 2002 (Insolvency) Order 2004, SI 2004/2312, art 2). If a special administration regime (see para 145 post) has effect, or a petition for an administration order has been presented before 15 September 2003, this provision is stated to have effect, from an administration perspective, in relation to any time before an administration order is in force in relation to the company, rather than where the appointment of an administrator has effect in relation to the company and the appointment took effect before the moratorium came into force: Insolvency Act 1986 Sch A1 para 40(7) (as so added); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

3 For the meaning of 'the court' see para 4 ante.

4 As to the meaning of 'director' see para 5 note 2 ante.

5 Insolvency Act 1986 Sch A1 para 40(1), (2)(a), (3) (as added: see note 1 supra).

6 Ibid Sch A1 para 40(2)(b), (3) (as added: see note 1 supra).

7 Ibid Sch A1 para 40(4)(a) (as added: see note 1 supra). An order under Sch A1 para 40 (as added and amended) may in particular regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium (Sch A1 para 40(5)(a) (as so added)), require the directors to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has

complained they have omitted to do (Sch A1 para 40(5)(b) (as so added)), require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct (Sch A1 para 40(5) (c) (as so added)), or bring the moratorium to an end and make such consequential provision as the court thinks fit (Sch A1 para 40(5)(d) (as so added)). In making an order the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value: Sch A1 para 40(6) (as so added).

8 Ibid Sch A1 para 40(4)(b) (as added: see note 1 supra). See further note 7 supra.

9 Ibid Sch A1 para 40(4)(c) (as added: see note 1 supra). See further note 7 supra.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vi) Offences/94. Offences in connection with obtaining a moratorium.

(vi) Offences

94. Offences in connection with obtaining a moratorium.

The following are offences in connection with the obtaining of a moratorium¹ for a company²:

- 137 (1) concealing any part of the company's property to the value of £500³ or more or concealing any debt due to or from the company⁴;
- 138 (2) fraudulently removing any part of the company's property to the value of £500⁵ or more⁶;
- 139 (3) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs⁷;
- 140 (4) making any false entry in any book or paper affecting or relating to the company's property or affairs⁸;
- 141 (5) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs⁹;
- 142 (6) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business)¹⁰.

If a person who is an officer¹¹ of the company does any of these things, or is privy to those relating to the falsification of documentation¹², at any time during the moratorium, he commits an offence¹³. An offence is also treated as having been committed if, within the period of 12 months ending with the day on which the moratorium came into force¹⁴, a person who was at the time an officer of the company did any of these things or was privy to their doing¹⁵. A person guilty of any of these offences is liable to imprisonment or a fine or both¹⁶.

¹ To obtain a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

² Ibid Sch A1 para 41(1) (as added: see note 1 supra). As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

³ This sum is subject to increase or reduction by order of the Secretary of State: ibid s 417A(1)(b) (s 417A added by the Insolvency Act 2000 Sch 1 paras 1, 10); Insolvency Act 1986 Sch A1 para 41(9) (as added: see note 1 supra). Such an order is made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (s 417A(3) (as so added)) and may contain such transitional provisions as may appear to the Secretary of State to be necessary or expedient (s 417A(2) (as so added)). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante.

⁴ Ibid Sch A1 para 41(4)(a) (as added: see note 1 supra). It is a defence for a person charged with this offence to prove that he had no intent to defraud: Sch A1 para 41(6)(a) (as so added).

⁵ This sum is subject to increase or reduction by order made under ibid s 417A (as added): see Sch A1 para 41(9) (as added: see note 1 supra); and note 3 supra.

⁶ Ibid Sch A1 para 41(4)(b) (as added: see note 1 supra).

7 Ibid Sch A1 para 41(4)(c) (as added: see note 1 supra). It is a defence for a person charged with this offence to prove that he had no intent to conceal the state of affairs of the company or to defeat the law: Sch A1 para 41(6)(b) (as so added).

8 Ibid Sch A1 para 41(4)(d) (as added: see note 1 supra). It is a defence for a person charged with this offence to prove that he had no intent to conceal the state of affairs of the company or to defeat the law: Sch A1 para 41(6)(b) (as so added).

9 Ibid Sch A1 para 41(4)(e) (as added: see note 1 supra).

10 Ibid Sch A1 para 41(4)(f) (as added: see note 1 supra). It is a defence for a person charged with this offence to prove that he had no intent to defraud: Sch A1 para 41(6)(a) (as so added). Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in circumstances which amount to an offence or which would amount to an offence if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, commits an offence: Sch A1 para 41(7) (as so added).

11 For the meaning of 'officer' see para 690 post. For these purposes, 'officer' includes a shadow director: Insolvency Act 1986 Sch A1 para 41(5) (as added: see note 1 supra). For the meaning of 'shadow director' see para 5 note 3 ante.

12 Ie the offences set out in heads (3)-(5) in the text.

13 Insolvency Act 1986 Sch A1 para 41(3) (as added: see note 1 supra).

14 As to the coming into force of a moratorium see para 78 ante.

15 Insolvency Act 1986 Sch A1 para 41(2) (as added: see note 1 supra).

16 Ibid Sch A1 para 41(8) (as added: see note 1 supra). The offences are punishable: (1) on indictment by a term of imprisonment not exceeding seven years or a fine, or both; or (2) summarily by a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum, or both: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vi) Offences/95. False representations.

95. False representations.

An officer¹ of a company² who makes any false representation or fraudulently does or omits to do anything for the purpose of obtaining a moratorium³ or an extension of a moratorium⁴ for that company commits an offence⁵, even if no moratorium or extension is obtained⁶. A person guilty of such an offence is liable to imprisonment or a fine or both⁷.

1 For the meaning of 'officer' see para 690 post. For these purposes, 'officer' includes a shadow director: Insolvency Act 1986 Sch A1 para 42(3) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). For the meaning of 'shadow director' see para 5 note 3 ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (as added: see note 1 supra). See para 73 et seq ante.

4 As to extending a moratorium see para 82 ante.

5 Insolvency Act 1986 Sch A1 para 42(1) (as added: see note 1 supra).

6 Ibid Sch A1 para 42(2) (as added: see note 1 supra).

7 Ibid Sch A1 para 42(4) (as added: see note 1 supra). The offence is punishable: (1) on indictment by a term of imprisonment not exceeding seven years, or a fine, or both; or (2) summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum, or both: s 430, Sch 10 (added by the Insolvency Act 2000 Sch 1 paras 1, 12). As to the statutory maximum see para 10 note 1 ante.

UPDATE

71-144 Company Voluntary Arrangements

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/96. Meetings to approve voluntary arrangement.

(vii) Approving the Voluntary Arrangement

96. Meetings to approve voluntary arrangement.

Where a moratorium¹ is in force the nominee² must, in order to decide whether to approve³ the proposed voluntary arrangement⁴, summon meetings of the company⁵ and its creditors for such a time⁶, date⁷ and place⁸ as he thinks fit⁹. A meeting so summoned¹⁰ must not approve any proposal or modification¹¹ which affects the right of a secured creditor of the company to enforce his security¹² or under which any preferential debt¹³ of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts¹⁴ or any preferential creditor¹⁵ of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt¹⁶.

1 le a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

2 As to the meaning of 'the nominee' see para 75 note 4 ante.

3 Approval may be with or without modifications: Insolvency Act 1986 Sch A1 para 31(1) (as added: see note 1 supra). The directors may, before the end of the period of seven days which ends with the meetings (or either of them) being held, give notice to the nominee of any modifications of the proposal for which they intend to seek the approval of those meetings: Sch A1 para 31(7) (as so added). Modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorised to act as nominee in relation to the voluntary arrangement (Sch A1 para 31(2) (as so added)), but must not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in s 1 (see paras 71-72 ante) (Sch A1 para 31(3) (as so added)). As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

4 As to the making of proposals see paras 72 ante, 108 post.

5 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

6 Meetings must in each case be summoned for commencement between 10.00 and 16.00 hours on a business day: Insolvency Act 1986 Sch A1 para 30(1) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, rr 1.13(2), 1.48(5) (r 1.13 substituted by SI 2003/1730; Insolvency Rules 1986, SI 1986/1925, rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). Whether the meetings are held on the same day or on different days (see note 7 infra), the creditors' meeting must be fixed for a time in advance of the company meeting: Insolvency Rules 1986, SI 1986/1925, r 1.13(3) (as so substituted).

7 The meetings may be held on the same day or on different days (ibid r 1.13(3) (as substituted: see note 6 supra)), but the date must be not more than 28 days from the date on which the moratorium came into force (ie the period specified in the Insolvency Act 1986 Sch A1 para 8(3) (as added) (see para 80 ante)): Sch A1 para 29(1) (as added: see note 1 supra); Insolvency Rules 1986, SI 1986/1925, r 1.48(1) (as added: see note 6 supra). Where the meetings are not held on the same day, they must be held within seven days of each other: r 1.13(4) (as so substituted).

8 In fixing the venue for the creditors' meeting and the company meeting, the person summoning the meeting ('the convener') must have regard primarily to the convenience of the creditors: ibid r 1.13(1) (as

substituted: see note 6 supra). If they are held on the same day (see note 7 supra), the meetings must be held in the same place (r 1.13(3) (as so substituted)). For the meaning of 'venue' see para 91 note 7 ante.

9 Insolvency Act 1986 Sch A1 para 29(1) (as added: see note 1 supra). If the nominee thinks fit, the creditors' meeting and the company meeting may be held together: Insolvency Rules 1986, SI 1986/1925, r 1.53(2) (as added: see note 6 supra).

10 As to the summoning of meetings see para 97 post.

11 As to the meaning of 'modifications' see para 84 note 5 ante.

12 Insolvency Act 1986 Sch A1 para 31(4) (as added: see note 1 supra). Such a proposal or modification may, however, be approved if the secured creditor concurs: Sch A1 para 31(4) (as so added).

13 References to preferential debts and preferential creditors are to be read in accordance with *ibid* s 386 (as amended) (see para 763 post): Sch A1 para 31(8) (as added: see note 1 supra).

14 *Ibid* Sch A1 para 31(5)(a) (as added: see note 1 supra).

15 See note 13 supra.

16 Insolvency Act 1986 Sch A1 para 31(5)(b) (as added: see note 1 supra). The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned: Sch A1 para 31(6) (as so added).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/97. Summoning of meetings.

97. Summoning of meetings.

Notices calling a company¹ meeting must be sent by the nominee² to all persons who are, to the best of the nominee's belief, members of the company³ at least 14 days before the day fixed for the hearing⁴. Notices calling a creditors' meeting must be sent by the nominee to all creditors specified in the statement of affairs⁵ and any other creditors of the company of whose address he is aware at least 14 days before the day fixed for the meeting⁶. Each notice must specify the court⁷ in which the documents relating to the obtaining of the moratorium⁸ were filed and state the effect of the provisions relating to requisite majorities⁹, and with each notice there must be sent a copy of the directors' proposal¹⁰, a copy of the statement of the company's affairs or, if the nominee thinks fit, a summary of it¹¹, the nominee's comments on the proposal¹², and forms of proxy¹³.

A meeting summoned in accordance with these provisions may resolve that it be adjourned or further adjourned¹⁴.

1 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 As to the meaning of 'the nominee' see para 75 note 4 ante.

3 Ie to all directors of the company and to any persons in whose case the nominee thinks that their presence is required as being officers of the company or as being directors or officers of it at any time in the two years immediately preceding the date of the notice: Insolvency Act 1986 Sch A1 para 30(1) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4); Insolvency Rules 1986, SI 1986/1925, rr 1.16(1), 1.48(5) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). The chairman may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it, whether or not a notice under the Insolvency Rules 1986, SI 1986/1925, has been sent to the person excluded: r 1.16(2). As to the meaning of 'member' see para 72 note 9 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'officer' see para 690 post.

4 Ibid rr 1.16(1), 1.48(3) (r 1.48(3) as added: see note 3 supra).

5 As to statements of a company's affairs see para 75 ante.

6 Insolvency Act 1986 Sch A1 para 29(2) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 1.48(2) (as added: see note 3 supra). In relation to a regulated company (see para 73 note 2 ante), the persons to be summoned to a creditors' meeting include the Financial Services Authority: Insolvency Act 1986 Sch A1 para 44(8) (as so added). A person appointed for the purpose by the Authority is entitled to attend and participate in, but not to vote at, a creditors' meeting summoned under these provisions: Sch A1 para 44(9)(a) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

7 For the meaning of 'the court' see para 4 ante.

8 Ie the moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (as added: see note 3 supra). See para 73 et seq ante.

9 As to the requisite majorities see paras 99-100 post.

10 Insolvency Rules 1986, SI 1986/1925, r 1.48(4)(a) (as added: see note 3 supra). As to the making of proposals see paras 72 ante, 108 post.

11 Ibid r 1.48(4)(b) (as added: see note 3 supra). The summary must include a list of creditors and the amount of their debts: r 1.48(4)(b) (as so added).

12 Ibid r 1.48(4)(c) (as added: see note 3 supra).

13 Ibid r 1.13(5) (substituted by SI 2003/1730). For the prescribed form of proxy see the Insolvency Rules 1986, SI 1986/1925, rr 1.13, 12.7, Sch 4 Form 8.1.

14 Insolvency Act 1986 Sch A1 para 30(2) (as added: see note 3 supra).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

97 Summoning of meetings

TEXT AND NOTES 10-12--SI 1986/1925 r 1.48(4) substituted, r 1.48(4A) added: SI 2010/686.

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98. The chairman.

The nominee¹ is the chairman at both the creditors' and company² meetings and at any combined meeting³. If for any reason the nominee is unable to attend, he may nominate another person to act as chairman in his place⁴; however, a person so nominated must be either a person qualified to act as an insolvency practitioner⁵ in relation to the company⁶, an authorised person⁷ in relation to the company⁸, or an employee of the nominee or his firm who is experienced in insolvency matters⁹. The chairman may not by virtue of any proxy held by him vote to increase or reduce the amount of his remuneration or expenses as the nominee or the supervisor¹⁰ of the proposed arrangement, unless the proxy specifically directs him to vote in that way¹¹.

1 As to the meaning of 'the nominee' see para 75 note 4 ante.

2 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 Insolvency Act 1986 Sch A1 para 30(1) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4); Insolvency Rules 1986, SI 1986/1925, rr 1.14(1), 1.48(5) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the summoning of meetings see para 97 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 1.14(2) (amended by SI 2002/2712).

5 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

6 Insolvency Rules 1986, SI 1986/1925, r 1.14(2)(a) (r 1.14(2)(a), (b) substituted, and r 1.14(2)(c) added, by SI 2002/2712).

7 A reference to an 'authorised person' is a reference to a person who is authorised pursuant to the Insolvency Act 1986 s 389A (as added) (see para 11 ante) to act as nominee or supervisor of a voluntary arrangement proposed or approved under Pt I (ss 1-7B) (as amended) or Pt VIII (ss 252-263) (as amended): Insolvency Rules 1986, SI 1986/1925, r 13.9(3) (added by SI 2002/2712).

8 Insolvency Rules 1986, SI 1986/1925, r 1.14(2)(b) (as substituted: see note 6 supra). The nominated person is not permitted to be an authorised person in relation to the company if the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

9 Insolvency Rules 1986, SI 1986/1925, r 1.14(2)(c) (as added: see note 6 supra).

10 As to the appointment of the supervisor see para 105 post.

11 Insolvency Rules 1986, SI 1986/1925, r 1.15.

UPDATE

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99. Voting and requisite majorities at company meetings.

Members of the company¹ at their meeting² vote according to the rights attaching to their shares³, in accordance with the articles of the company⁴. Subject to any express provision made in the articles, at a company meeting any resolution is to be regarded as passed if voted for by more than one-half in value of the members present in person or by proxy and voting on the resolution⁵.

1 As to the meaning of 'member' see para 72 note 9 ante. As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 As to the summoning of meetings see para 97 ante.

3 References to a person's shares include any other interest which he may have as a member of the company: Insolvency Act 1986 Sch A1 para 30(1) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4); Insolvency Rules 1986, SI 1986/1925, rr 1.18(3), 1.51 (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

4 Insolvency Rules 1986, SI 1986/1925, r 1.18(1). A member is entitled to vote either for or against the proposal or any modification of it even if no voting rights attach to his shares if the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), although any vote accordingly cast is left out of account in determining whether a majority for any resolution has been obtained: rr 1.18(2), 1.20(2) (revoked by SI 2002/2712); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the meaning of 'modifications' see para 84 note 5 ante.

5 Insolvency Rules 1986, SI 1986/1925, rr 1.20(1), 1.53(1) (r 1.20(1) amended by SI 1987/1919; Insolvency Rules 1986, SI 1986/1925, r 1.53(1) as added (see note 3 supra)). The value of members is determined by reference to the number of votes conferred on each member by the company's articles: Insolvency Rules 1986, SI 1986/1925, r 1.20(1) (as so amended). If the chairman (ie the nominee: see paras 75 note 4, 98 ante) uses a proxy contrary to r 1.15 (see para 98 ante), his vote with that proxy does not count towards any majority for these purposes: r 1.20(3).

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100. Voting and requisite majorities at creditors' meetings.

Every creditor who has notice of the creditors' meeting¹ is entitled to vote at the meeting or any adjournment of it². Creditors' votes are calculated according to the amount of the creditor's debt as at the beginning of the moratorium³, after deducting any amounts paid in respect of the debt after that date⁴. At each meeting the chairman must ascertain the entitlement of persons wishing to vote and must admit or reject their claims accordingly⁵; the chairman's decision is subject to appeal⁶, and if he is in doubt whether a claim should be admitted or rejected he must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained⁷.

For any resolution to pass approving any proposal or modification there must in general be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution⁸. A creditor's vote in respect of any claim or part of a claim will, however, be left out of account⁹ if:

- 143 (1) written notice of the claim was not given to the nominee, either at or before the meeting¹⁰;
- 144 (2) the claim or part is secured¹¹; or
- 145 (3) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note¹².

Any resolution will be invalid if those voting against it include more than half in value of the creditors¹³.

If on an appeal¹⁴ the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned or make such order as it thinks just¹⁵.

1 As to the summoning of meetings see para 97 ante.

2 Insolvency Act 1986 Sch A1 para 30(1) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4); Insolvency Rules 1986, SI 1986/1925, r 1.49(1) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

3 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (as added: see note 2 supra). See para 73 et seq ante. For the meaning of 'the beginning of the moratorium' see para 78 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 1.49(2) (as added: see note 2 supra). A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting, but not otherwise, his debt must be valued at £1 unless the chairman (ie the nominee: see paras 75 note 4, 98 ante) agrees to put a higher value on it: r 1.49(3) (as so added). The chairman's decision on this matter and on the admission or rejection of a claim is subject to appeal to the court by any creditor or member of the company (r 1.50(3) (as so added)), although an application to the court by way of appeal against the chairman's decision may not be made after the end of the period of 28 days beginning with the first day on which the report required by the Insolvency Act 1986 Sch A1 para 30(3) (as added) (see para 101 post) has been made to the court (Insolvency Rules 1986, SI 1986/1925, r 1.50(6) (as so added)). The chairman is not personally liable for any costs incurred by any person in respect of an appeal under these provisions: r 1.50(7)

(as so added). As to the meaning of 'member' see para 72 note 9 ante. For the meaning of 'the court' see para 4 ante.

5 Ibid r 1.50(1) (as added: see note 2 supra). The chairman may admit or reject a claim in whole or in part: r 1.50(2) (as so added).

6 See ibid r 1.50(3) (as added); and note 4 supra.

7 Ibid r 1.50(4) (as added: see note 2 supra).

8 Ibid r 1.52(1) (as added: see note 2 supra). The same applies in respect of any other resolution proposed at the meeting but substituting one-half for three-quarters: r 1.52(2) (as so added). At a meeting of the creditors for any resolution to pass extending, or further extending, a moratorium (see para 82 ante) or to bring a moratorium to an end before the end of the period of any extension (see para 81 ante) there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution; and for this purpose the provision requiring there to be left out of account a creditor's vote in respect of any secured or part-secured claim or part of a claim (see the text and note 11 infra) does not apply and a secured creditor is entitled to vote in respect of the amount of his claim without deducting the value of his security: r 1.52(3) (as so added). If the chairman uses a proxy contrary to the provisions restricting the use by the chairman of any proxy held by him (see rr 1.15, 1.48(5) (as added); and para 98 ante), his vote with that proxy does not count towards the majority: r 1.52(7) (as so added; and amended by SI 2003/1730). As to the meaning of 'modifications' see para 84 note 5 ante.

9 It is for the chairman to decide whether a vote is to be left out of account: Insolvency Rules 1986, SI 1986/1925, r 1.52(6)(a) (as added (see note 2 supra); and amended by SI 2003/1730). His decision is subject to appeal to the court by any creditor or member: Insolvency Rules 1986, SI 1986/1925, r 1.52(8) (as so added). As to appeals see note 4 supra.

10 Ibid r 1.52(4)(a) (as added: see note 2 supra).

11 Ibid r 1.52(4)(b) (as added: see note 2 supra). See note 8 supra.

12 Ibid r 1.52(4)(c) (as added: see note 2 supra). A creditor's vote in respect of any claim or part of a claim will not, however, be left out of account in these circumstances if the creditor is willing to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made or, in the case of a company, which has not gone into liquidation, as a security in his hands (r 1.52(4)(c)(i) (as so added)) and to estimate the value of the security and, for the purpose of entitlement to vote but not of any distribution under the arrangement, to deduct it from his claim (r 1.52(4)(c)(ii) (as so added)).

13 For these purpose, only those creditors who have notice of the meeting, whose votes are not to be left out of account pursuant to ibid r 1.52(4) (as added) (see the text and notes 9-11 supra), and who are not, to the best of the chairman's belief, persons connected with the company, are counted: r 1.52(5) (as added: see note 2 supra). It is for the chairman to decide whether a person is a connected person and for these purposes the chairman is entitled to rely on the information provided by the statement of the company's affairs (see para 75 ante) or otherwise in accordance with Pt I (rr 1.1-1.54 (as amended)): r 1.52(6)(b) (as so added). His decision is subject to appeal to the court by any creditor or member: r 1.52(8) (as so added). As to appeals see note 4 supra. For the meaning of 'connected' with a company see para 5 ante.

14 The chairman's decision on any matter under these provisions or in respect of the provisions relating to his agreement to put a higher value on a debt for an unliquidated amount or a debt whose value is not ascertained for the purposes of voting is subject to appeal to the court by any creditor or member of the company: see ibid rr 1.49(3), 1.50(3), 1.52(8) (as added); and the text and notes 4, 9, 13 supra. As to the mechanism for appeals see note 4 supra.

15 Ibid rr 1.50(5), 1.52(8) (as added: see note 2 supra). The court's power to make such an order is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity: r 1.52(5) (as so added).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

100 Voting and requisite majorities at creditors' meetings

NOTE 8--SI 1986/1925 r 1.52(1), (2) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/101. Reports of meetings.

101. Reports of meetings.

After the conclusion of company meetings and creditors' meetings¹ the chairman of the meeting² must prepare a report of the meetings and report the result of the meeting to the court³. The report must:

- 146 (1) state whether the proposal for a voluntary arrangement⁴ was approved by the creditors of the company⁵ alone or by both the creditors and members of the company and in either case whether such approval was with any modifications⁶;
- 147 (2) set out the resolutions which were taken at each meeting, and the decisions on each one⁷;
- 148 (3) list the creditors and members of the company, with their respective values, who were present or represented at the meetings, and how they voted on each resolution⁸;
- 149 (4) state whether, in the opinion of the supervisor⁹, the European Regulation on Insolvency Proceedings¹⁰ applies to the voluntary arrangement and, if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings¹¹; and
- 150 (5) include such further information, if any, as the chairman thinks it appropriate to make known to the court¹².

Immediately after reporting to the court, the chairman of each meeting must also give notice of its result to all those who were sent notice of the meeting¹³.

1 Ie both meetings summoned under the Insolvency Act 1986 Sch A1 para 29 (as added): see para 96 et seq ante.

2 Ie the nominee: see paras 75 note 4, 98 ante.

3 Insolvency Act 1986 Sch A1 para 30(3) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4); Insolvency Rules 1986, SI 1986/1925, rr 1.24(1), 1.54(2) (rr 1.35-1.54 added by SI 2002/2712. The addition of these provisions to the rules does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). A copy of the chairman's report must be filed in court within four days of the meetings being held, and the court must cause that copy to be endorsed with the date of filing: Insolvency Rules 1986, SI 1986/1925, r 1.24(3). For the meaning of 'the court' see para 4 ante.

4 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post.

5 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(a) (amended by SI 2002/2712). Where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies) the report is required simply to state whether the proposal was approved or rejected (ie there is no requirement to specify by whom) and, if approved, with what (if any) modifications: Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(a); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the meaning of 'modifications' see para 84 note 5 ante. As to the meaning of 'member' see para 72 note 9 ante.

In the case of a proposed voluntary arrangement relating to a limited liability partnership, the report (of the single meeting held) must include, where modifications to the proposal were proposed at the meeting, the response to those proposed modifications made by the partnership: see the Insolvency Act 1986 s 4(6); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

7 Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(b).

8 Ibid r 1.24(2)(c) (r 1.24(2)(c) amended, and r 1.24(2)(ca) added, by SI 2002/1307).

9 As to the appointment of the supervisor see para 105 post.

10 ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings (see para 46 et seq ante).

11 Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(ca) (as added: see note 8 supra).

12 Ibid r 1.24(2)(d).

13 Insolvency Act 1986 Sch A1 para 30(3) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, rr 1.24(4), 1.54(3)(b) (r 1.54 as added: see note 3 supra). If the voluntary arrangement has effect (ie under the Insolvency Act 1986 Sch A1 para 36(1)(a), (c), (2)-(6) (as added) (see para 103 post)) or, where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), has been approved by the meetings, whether or not in the form proposed, the supervisor (see para 105 post) must forthwith send a copy of the chairman's report to the registrar of companies: Insolvency Rules 1986, SI 1986/1925, rr 1.24(5), 1.54(3)(c) (r 1.24(5) amended by SI 2002/2712; Insolvency Rules 1986, SI 1986/1925, r 1.54 as so added); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

There is a prescribed form of a report by the chairman of the meeting to the registrar of companies required for these purposes (see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 1.1 (substituted by SI 2002/2712)). However, the only person to send a copy of the chairman's report to the registrar of companies is the supervisor.

In the case of a proposed voluntary arrangement relating to a limited liability partnership, notice of the result of the meeting must also be given to the partnership: see the Insolvency Act 1986 s 4(6); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

101 Reports of meetings

NOTE 13--SI 1986/1925 Sch 4 Form 1.1 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/102. Proceedings to obtain agreement on or rejection of the proposal.

102. Proceedings to obtain agreement on or rejection of the proposal.

If the chairman¹ thinks fit, the creditors' meeting and the company meeting may be held together². The chairman may, and must if it is so resolved at the meeting in question, adjourn that meeting, although any adjournment must not be to a day which is more than 14 days after the date on which the moratorium³, including any extension⁴, ends⁵. If, following the final adjournment of the creditors' meeting, the proposal⁶, with or without modifications⁷, has not been approved by the creditors, it is deemed rejected⁸.

1 le the nominee: see paras 75 note 4, 98 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 1.53(2) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the summoning of meetings see para 97 ante.

3 le the moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

4 As to the extension of a moratorium see para 82 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 1.53(3) (as added: see note 2 supra). If the meetings are adjourned, notice of the fact must be given by the nominee forthwith to the court: r 1.53(4) (as so added). For the meaning of 'the court' see para 4 ante.

6 As to the making of proposals see paras 72 ante, 108 post.

7 As to the meaning of 'modifications' see para 84 note 5 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 1.53(5) (as added: see note 2 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

102 Proceedings to obtain agreement on or rejection of the proposal

NOTE 5--SI 1986/1925 r 1.53(4A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/103. Decisions to implement the arrangement.

103. Decisions to implement the arrangement.

A decision with respect to the approval of a proposed voluntary arrangement¹ (and therefore the bringing to an end of the moratorium²) has effect if it has been taken either by both the company³ and creditors' meetings⁴ or by the creditors' meeting only⁵, although if the decision taken by the creditors' meeting differs from one taken by the company meeting a member⁶ of the company may apply to the court⁷ for an order that the company meeting decision have effect instead of the creditor meeting decision⁸.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72 ante, 108 post.

2 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante. If the moratorium has not previously come to an end, it ends at the end of the day on which a decision to approve a voluntary arrangement takes effect: see the Insolvency Act 1986 Sch A1 para 8(7) (as so added); and para 80 ante.

3 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

4 Ie both meetings summoned under the Insolvency Act 1986 Sch A1 para 29 (as added): see para 96 et seq ante.

5 Ibid Sch A1 para 36(1)(a), (c), (2) (as added: see note 2 supra).

6 As to the meaning of 'member' see para 72 note 9 ante.

7 For the meaning of 'the court' see para 4 ante. No application may be made after the end of the period of 28 days beginning with the day on which the decision was taken by the creditors' meeting or, where the decision of the company meeting was taken on a later day, that day: Insolvency Act 1986 Sch A1 para 36(4) (as added: see note 2 supra). In relation to a regulated company (see para 73 note 2 ante), the Financial Services Authority is entitled to be heard on any application: Sch A1 para 44(10) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

8 Ibid Sch A1 para 36(3), (5)(a) (as added: see note 2 supra). The court may also make any such other order as it thinks fit: Sch A1 para 36(5)(b) (as so added). Where the court makes an order under Sch A1 para 36(5) (as added), the member of the company who applied for it must serve sealed copies of it on the supervisor of the voluntary arrangement and the directors of the company: Insolvency Rules 1986, SI 1986/1925, rr 1.22A(1), (2), 1.54(2), (3)(a) (rr 1.22A, 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the meaning of 'director' see para 5 note 2 ante. Service on the directors may be effected by service of a single copy on the company at its registered office: Insolvency Rules 1986, SI 1986/1925, r 1.22A(3) (as so added). The directors or (as the case may be) the supervisor must forthwith after receiving a copy of the court's order give notice of it to all persons who were sent notice of the creditors' or company meetings or who, not having been sent such notice, are affected by the order (r 1.22A(4) (as so added)), and the person on whose application the order was made must, within seven days of the order, deliver an office copy to the registrar of companies (r 1.22A(5) (as so added)). As to the appointment of the supervisor see para 105 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

103 Decisions to implement the arrangement

NOTE 8--SI 1986/1925 r 1.22A(5) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/104. Effect of approval.

104. Effect of approval.

Where a decision approving a voluntary arrangement¹ has effect², the arrangement takes effect as if made by the company³ at the creditors' meeting⁴. The arrangement binds every person who in accordance with the rules was entitled to vote at that meeting⁵ (whether or not he was present or represented at it)⁶, or would have been so entitled if he had had notice of it⁷, as if he were a party to the voluntary arrangement⁸, and the court⁹ must dismiss any petition for the winding up of the company¹⁰ which was presented before the beginning of the moratorium¹¹.

1 For the meaning of 'voluntary arrangement' see para 71 ante.

2 Ie pursuant to the Insolvency Act 1986 Sch A1 para 36(1)(a), (c), (2)-(6) (as added) (see para 103 ante).

3 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

4 Insolvency Act 1986 Sch A1 para 37(1), (2)(a) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). As to the summoning of company and creditors meetings see para 96 et seq ante.

5 As to voting and requisite majorities at creditors' meetings see para 100 ante.

6 Insolvency Act 1986 Sch A1 para 37(2)(b)(i) (as added: see note 4 supra).

7 Ibid Sch A1 para 37(2)(b)(ii) (as added: see note 4 supra). If when the arrangement ceases to have effect, any amount payable to a person bound by virtue of Sch A1 para 37(2)(b)(ii) (as added) has not been paid and the arrangement did not come to an end prematurely, the company will at that time become liable to pay to that person the amount payable under the arrangement: Sch A1 para 37(3) (as so added). As to when a voluntary arrangement comes to an end prematurely see para 74 note 15 ante.

8 Ibid Sch A1 para 37(2)(b) (as added: see note 4 supra).

9 For the meaning of 'the court' see para 4 ante.

10 Ie any petition other than an excepted petition: Insolvency Act 1986 Sch A1 para 37(4) (as added: see note 4 supra). For the meaning of 'excepted petition' see para 88 note 3 ante.

11 Ibid Sch A1 para 37(4) (as added: see note 4 supra). For the meaning of 'the beginning of the moratorium' see para 78 ante. As to moratoriums see para 73 et seq ante. The court must not dismiss a winding-up petition: (1) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required to be made by the chairman to the court pursuant to Sch A1 para 30(3) (as added) (see para 101 ante) has been made to the court (Sch A1 para 37(5)(a) (as so added)); or (2) at any time when an application to the court under Sch A1 para 38 (as added) (see para 107 post) or an appeal in respect of such an application is pending or at any time in the period within which such an appeal may be brought (Sch A1 para 37(5)(b) (as so added)). As to notification of the completion of the arrangement see para 139 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/105. Appointment of supervisor and transfer of assets.

105. Appointment of supervisor and transfer of assets.

Where a voluntary arrangement¹ approved by one or both of the meetings summoned by the nominee² has taken effect³, the person who is for the time being carrying out in relation to the arrangement the functions conferred by virtue of the approval of the arrangement⁴ on the nominee, or by virtue of any modifications⁵ on a person other than the nominee, will be known as the supervisor of the arrangement⁶. On the taking effect of the arrangement the directors⁷ must forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement⁸.

If the voluntary arrangement is approved, with or without modifications, by the creditors' meeting, a resolution may be taken by the creditors, where two or more supervisors are appointed, on the question whether acts to be done in connection with the arrangement may be done by any one of them, or must be done by both or all⁹. If at either meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting, that person's written consent to act, unless he is present and then and there signifies his consent¹⁰, and his written confirmation that he is qualified to act as an insolvency practitioner¹¹ or is an authorised person¹² in relation to the company¹³.

Provision is also made for increasing the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, for replacing one or more of those persons¹⁴.

1 For the meaning of 'voluntary arrangement' see para 71 ante.

2 As to the summoning of company and creditors meetings see para 96 et seq ante. As to the meaning of 'the nominee' see para 75 note 4 ante.

3 Ie pursuant to the Insolvency Act 1986 Sch A1 para 36(1)(a), (c), (2)-(6) (as added) (see para 103 ante).

4 As to the approval of the voluntary arrangement and the effect of approval see paras 101, 104 ante.

5 Ie pursuant to the Insolvency Act 1986 Sch A1 para 31(2) (as added) (see para 96 ante). As to the meaning of 'modifications' see para 84 note 5 ante.

6 Insolvency Act 1986 Sch A1 para 39(1), (2) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). As to the functions of the supervisor see para 106 post.

7 As to the meaning of 'director' see para 5 note 2 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 1.54(1) (r 1.22(1) substituted, r 1.22(2) repealed, r 1.22(3)(b) amended, rr 1.35-1.54 added, by SI 2002/2712). The amendments made to these provisions do not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

9 Insolvency Rules 1986, SI 1986/1925, rr 1.22(1), 1.54(2) (r 1.22(1) as substituted and r 1.54(2) as added: see note 8 supra). Where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), it is instead provided that if the voluntary arrangement is approved, with or without modifications, by both the company and creditors' meetings, a resolution may be taken by the creditors, where two or more insolvency practitioners are appointed to act as supervisor, on the question

whether acts to be done in connection with the arrangement may be done by any one of them, or must be done by both or all, and that such a resolution may be passed in anticipation of the approval of the voluntary arrangement by the company meeting if that meeting has not then been concluded: r 1.22(1), (2) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

10 Insolvency Rules 1986, SI 1986/1925, r 1.22(3)(a).

11 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

12 For the meaning of 'authorised person' see para 98 note 7 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 1.22(3)(b) (as amended: see note 8 supra). Confirmation that a person is an authorised person in relation to the company is not required in a case where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), since an authorised person could not in those circumstances be appointed: r 1.22(3)(b) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

14 Insolvency Act 1986 Sch A1 para 39(7) (as added: see note 6 supra). Whenever it is expedient to appoint a person to carry out the functions of the supervisor, and it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court, the court may make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy: Sch A1 para 39(6) (as so added).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/106. Functions of supervisor.

106. Functions of supervisor.

The supervisor¹ may apply to the court² for directions in relation to any particular matter arising under the voluntary arrangement³, and is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it⁴. If any of the company's⁵ creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court⁶, and the court may confirm, reverse or modify any act or decision of the supervisor⁷, give him directions⁸, or make such other order as it thinks fit⁹.

1 As to the appointment of the supervisor see para 105 ante.

2 For the meaning of 'the court' see para 4 ante. As to the mode of application and the procedure see para 1055 et seq post. As to petitions to wind up presented by the supervisor see para 450 post; and as to petitions for an administration order presented by the supervisor see para 148 post.

3 Insolvency Act 1986 Sch A1 para 39(5)(a) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). For the meaning of 'voluntary arrangement' see para 71 ante. The power to seek directions from the court does not enable the court to modify the terms of a voluntary arrangement: *Re Alpa Lighting Ltd* [1997] BPIR 341.

4 Insolvency Act 1986 Sch A1 para 39(5)(b) (as added: see note 3 supra).

5 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

6 Insolvency Act 1986 Sch A1 para 39(3) (as added: see note 3 supra). In relation to a regulated company (see para 73 note 2 ante), the persons who may apply to the court include the Financial Services Authority: Insolvency Act 1986 Sch A1 para 44(13) (as so added). If a person other than the Authority applies to the court, the Authority is entitled to be heard on the application: Sch A1 para 44(14) (as so added). As to the mode of application and the procedure see para 1055 et seq post. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

7 Ibid Sch A1 para 39(4)(a) (as added: see note 3 supra).

8 Ibid Sch A1 para 39(4)(b) (as added: see note 3 supra).

9 Ibid Sch A1 para 39(4)(c) (as added: see note 3 supra). For the analogous provisions in relation to a liquidator see para 1038 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(2) MORATORIUM/(vii) Approving the Voluntary Arrangement/107. Challenge of decisions.

107. Challenge of decisions.

The nominee¹, any person entitled to vote at either the company meeting² or the creditors' meeting³, and any person who would have been entitled to vote at the creditors' meeting if he had had notice of it⁴, may apply to the court⁵ on one or both of the following grounds:

- 151 (1) that a voluntary arrangement⁶ approved at one or both of the meetings⁷ and which has taken effect⁸ unfairly prejudices the interests of a creditor, member or contributory of the company⁹;
- 152 (2) that there has been some material irregularity at or in relation to either of those meetings¹⁰.

Where on such an application the court is satisfied as to either of the grounds it may:

- 153 (a) revoke or suspend any decision approving the voluntary arrangement which has effect¹¹;
- 154 (b) revoke or suspend any decision taken by the meeting in respect of which some material irregularity has been shown¹²;
- 155 (c) give a direction¹³, pending revocation or suspension of the decision approving the arrangement, to any person for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make¹⁴; or
- 156 (d) give a direction for the summoning of a further company meeting or, as the case may be, creditors' meeting to reconsider the original proposal where a decision has been taken by a meeting in respect of which some material irregularity has been shown¹⁵.

The Insolvency Rules 1986¹⁶ make provision as to the making of such orders¹⁷.

1 As to the meaning of 'the nominee' see para 75 note 4 ante. The nominee is the chairman at both the creditors' and company meetings and at any combined meeting: see para 98 ante.

2 As to entitlement to vote and requisite majorities at company meetings see para 99 ante. As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

3 As to entitlement to vote and requisite majorities at creditors' meetings see para 100 ante.

4 As to the summoning of meetings see para 97 ante.

5 For the meaning of 'the court' see para 4 ante. In relation to a regulated company (see para 73 note 2 ante), the persons who may apply to the court include the Financial Services Authority: Insolvency Act 1986 Sch A1 para 44(11) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). If a person other than the Authority applies to the court, the Authority is entitled to be heard on the application: Insolvency Act 1986 Sch A1 para 44(12) (as so added). No application may be made after the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required to be made by Sch A1 para 30(3) (as added) (see para 101 ante) has been made to the court (Sch A1 para 38(3)(a) (as so added)) or, in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place (Sch A1 para 38(3)(b) (as so added)), although an application by a person who would have been entitled to vote at the creditors' meeting if he had

had notice of it on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect (unless it came to an end prematurely) (Sch A1 para 38(3) (as so added)). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq. As to when a voluntary arrangement comes to an end prematurely see para 74 note 15 ante.

6 For the meaning of 'voluntary arrangement' see para 71 ante.

7 As to the approval of the voluntary arrangement see para 101 et seq ante.

8 As to the effect of approval see para 104 ante.

9 Insolvency Act 1986 Sch A1 para 38(1)(a), (2) (as added: see note 5 supra). As to the meaning of 'member' see para 72 note 9 ante. See further the cases noted to para 135 post.

10 Ibid Sch A1 para 38(1)(b) (as added: see note 5 supra). Except in pursuance of these provisions, a decision taken at a meeting summoned by the nominee under Sch A1 para 29 (as added) is not invalidated by any irregularity at or in relation to the meeting: Sch A1 para 38(9) (as so added).

11 Ibid Sch A1 para 38(4)(a)(i) (as added: see note 5 supra). Decisions approving voluntary arrangements have effect pursuant to Sch A1 para 36(1)(a), (c), (2)-(6) (as added) (see para 103 ante). Where the court revokes or suspends a decision under Sch A1 para 38(4)(a) (as added) or Sch A1 para 38(5) (as added), it may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect and such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done: Sch A1 para 38(7)(b), (8) (as so added).

12 Ibid Sch A1 para 38(4)(a)(ii) (as added: see note 5 supra).

13 Where the court gives a direction under ibid Sch A1 para 38(4)(b) (as added), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium (ie the moratorium under s 1A (as added) (see para 73 et seq ante): Sch A1 para 1 (as added: see note 5 supra)): Sch A1 para 38(6) (as so added). Where the court gives a direction under Sch A1 para 38(4)(b) (as added), it may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect and such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done: Sch A1 para 38(7)(a), (8) (as so added).

14 Ibid Sch A1 para 38(4)(b)(i) (as added: see note 5 supra). Where, at any time after giving a direction to any person for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, the court is satisfied that the directors do not intend to submit a revised proposal, the court must revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect: Sch A1 para 38(5) (as so added). See further note 11 supra. As to the meaning of 'director' see para 5 note 2 ante.

15 Ibid Sch A1 para 38(4)(b)(ii) (as added: see note 5 supra). As to the giving of directions see note 14 supra.

16 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

UPDATE

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(i) Introduction/108. Proposals by directors, liquidators or administrators.

(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM

(i) Introduction

108. Proposals by directors, liquidators or administrators.

Proposals for voluntary arrangements¹ may be made by the directors² of a company³ or, if the company is in liquidation or administration, by the liquidator or administrator⁴. If the directors make the proposal, then provided the company is not in liquidation or administration and no steps have been taken to obtain a moratorium⁵ in connection with the proposal⁶, they must prepare and submit to the nominee and the court⁷ a number of documents detailing the state of the company and the contents and intentions of the proposal⁸. If the liquidator or administrator is making the proposal and is not also the nominee for the purposes of the proposal he must follow a broadly similar procedure⁹, although it will be subject to certain modifications reflecting his status as liquidator or administrator¹⁰. If, however, the liquidator or administrator is making the proposal and is also the nominee for the purposes of the proposal, the procedure is much simplified (since there is no need to submit any documentation to the nominee)¹¹, and is essentially reduced to simply preparing a proposal in a modified form¹².

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see also para 72 ante.

2 As to the meaning of 'director' see para 5 note 2 ante.

3 As to the meaning of 'company' see para 71 note 1 ante.

4 See the Insolvency Act 1986 s 1(1), (3) (s 1(1) amended, and s 1(3) substituted, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 10); and para 72 ante.

5 Is a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

6 See the Insolvency Act 1986 ss 2, 3 (s 2 amended by the Insolvency Act 2000 s 2, Sch 1 paras 1, 3, Sch 2 paras 1, 3); and the Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(a) (r 1.1(2)(a) substituted by SI 2002/2712; and amended by SI 2003/1730). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), the circumstances under which the directors are required to proceed in accordance with these provisions (see the text and notes 7-12 infra; and paras 109-115 post) are those where the company is not in liquidation and there is no administration order in force in respect of it: Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(a); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). For the meaning of 'the nominee' see para 71 ante.

7 For the meaning of 'the court' see para 4 ante.

8 See paras 109-115 post.

9 See the Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(c) (substituted by SI 2002/2712); Insolvency Rules 1986, SI 1986/1925, r 1.12 (amended by SI 1987/1919; SI 2002/2712). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), the circumstances under which the liquidator or administrator is required to proceed in accordance with these provisions (see the text and notes 7-8 supra; and paras 116, 118 post) are those where the nominee is an insolvency practitioner other than the liquidator or the

administrator: Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(c); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

10 See paras 116, 118 post.

11 See the Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(b) (amended by SI 2003/1730).

12 See paras 116-117 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(ii) Proposal by Directors where Nominee is neither Liquidator nor Administrator/109. Preparation and contents of proposal.

(ii) Proposal by Directors where Nominee is neither Liquidator nor Administrator

109. Preparation and contents of proposal.

Where voluntary arrangements are proposed by the directors of a company¹ and there are no proposals for a moratorium², the directors must prepare a proposal and submit it to the intended nominee³. The proposal must include a document setting out the terms of the proposed arrangement⁴ and a statement of the company's affairs⁵, and must provide a short explanation why, in the directors' opinion, a voluntary arrangement is desirable, giving reasons why the company's creditors may be expected to concur with such an arrangement⁶. The matters which must be stated, or otherwise dealt with, in the proposal are:

- 157 (1) the company's assets, with an estimate of their respective values, so far as is within the directors' immediate knowledge⁷;
- 158 (2) the extent, if any, to which the company's assets are charged in favour of creditors or to which particular assets are to be excluded from the voluntary arrangement, so far as is within the directors' immediate knowledge⁸;
- 159 (3) particulars of any property, other than assets of the company itself, which it is proposed to include in the arrangement, the source of such property and the terms on which it is to be made available for inclusion⁹;
- 160 (4) the nature and amount of the company's liabilities, so far as within the directors' immediate knowledge, and the manner in which it is proposed they are to be met, modified, postponed or otherwise dealt with by means of the arrangement¹⁰;
- 161 (5) an estimate of: (a) the value of the prescribed part¹¹, should the company go into liquidation if the proposal for the voluntary arrangement is not accepted, whether or not the provisions regarding the share of the assets for unsecured creditors¹² are to be disapplied; and (b) the value of the company's net property on the date that the estimate is made¹³;
- 162 (6) whether any, and if so what, guarantees have been given of the company's debts by other persons, specifying which, if any, of the guarantors are persons connected with the company¹⁴;
- 163 (7) the proposed duration of the voluntary arrangement¹⁵;
- 164 (8) the proposed dates of distributions to creditors, with estimates of their amounts¹⁶;
- 165 (9) how it is proposed to deal with the claim of any person who is bound by the arrangement on the basis that he would have been entitled to vote at the meeting of creditors if he had had notice of it¹⁷;
- 166 (10) the amount proposed to be paid to the nominee, as such, by way of remuneration and expenses¹⁸;
- 167 (11) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed¹⁹;
- 168 (12) whether, for the purposes of the arrangement, any guarantees are to be offered by directors, or other persons, and whether, if so, any security is to be given or sought²⁰;

- 169 (13) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors²¹;
- 170 (14) the manner in which funds held for the purposes of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with²²;
- 171 (15) the manner in which the business of the company is proposed to be conducted during the course of the arrangement²³;
- 172 (16) details of any further credit facilities which it is intended to arrange for the company, and how the debts so arising are to be paid²⁴;
- 173 (17) the functions which are to be undertaken by the supervisor of the arrangement²⁵;
- 174 (18) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is either qualified to act as an insolvency practitioner²⁶ in relation to the company or is an authorised person²⁷ in relation to the company²⁸;
- 175 (19) whether the European Regulation on Insolvency Proceedings²⁹ will apply and, if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings³⁰.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante. As to the application of certain of these provisions in a modified form where a voluntary arrangement is proposed by the liquidator or administrator see paras 116-118 post.

2 Ie a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 Insolvency Act 1986 s 2(1), (3) (s 2(1) amended by the Insolvency Act 2000 Sch 1 paras 1, 3); Insolvency Rules 1986, SI 1986/1925, r 1.2. For the meaning of 'the nominee' see para 71 ante. The purpose of preparing and submitting a proposal to the intended nominee is to provide him with material on which (with or without amendments) to prepare his report for the court (see para 113 post): Insolvency Act 1986 s 2(3); Insolvency Rules 1986, SI 1986/1925, r 1.2. The amendments, if any, are those made under r 1.3 (as amended) (r 1.2); amendments to the proposal may, subject to the written agreement of the nominee, be made at any time up to the delivery of the nominee's report to the court) (r 1.3(3)). For the meaning of 'the court' see para 4 ante.

In the case of a proposed voluntary arrangement relating to a limited liability partnership, the proposal is required to be prepared and submitted by the designated members of the partnership: see the Insolvency Act 1986 s 2(3); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. 'Designated member' has the same meaning as it has in the Limited Liability Partnerships Act 2000: Insolvency Act 1986 s 436 (amended for these purposes by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3); and see para 1309 post; and PARTNERSHIP vol 79 (2008) PARA 234 et seq.

4 Insolvency Act 1986 s 2(3)(a). An arrangement can include terms which were not included in the proposal and which are not reduced to writing, provided that there is a clear understanding of what the debtor company is submitting to the creditors for their approval: *Doorbar v Alltime Securities Ltd* [1995] 1 BCLC 316, sub nom *Re A Debtor (No 162 of 1993)*, *Doorbar v Alltime Securities Ltd* [1994] BCC 994; affd [1996] 2 All ER 948, [1996] 1 WLR 456, CA.

5 Insolvency Act 1986 s 2(3)(b). The particulars contained in the statement of affairs submitted to the intended nominee at this stage are subsequently supplemented or amplified by a further detailed statement: see the Insolvency Rules 1986, SI 1986/1925, r 1.5(2); and para 111 post.

6 Ibid r 1.3(1).

7 Ibid r 1.3(2)(a)(i).

8 Ibid r 1.3(2)(a)(ii), (iii).

9 Ibid r 1.3(2)(b).

10 Ibid r 1.3(2)(c). In particular, it must be stated: (1) how it is proposed to deal with preferential creditors and creditors who are, or claim to be, secured; (2) how persons connected with the company, being creditors, are proposed to be treated under the arrangement; and (3) whether there are, to the directors' knowledge, any

circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims under the provisions dealing with transactions at an undervalue (ie under the Insolvency Act 1986 s 238 (as amended) (see para 843 et seq post)), preferences (ie under s 239 (as amended) (see para 843 et seq post)), extortionate credit transactions (ie under s 244 (as amended) (see para 857 et seq post)), or invalidity of floating charges (ie under s 245 (as amended) (see para 861 et seq post)), and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the company in respect of such claims: Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(c)(i)-(iii). For these purposes, references to preferential debts and preferential creditors are to be read in accordance with the Insolvency Act 1986 s 386 (as amended) (see para 763 post) (Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(c)(i)); 'secured creditor', in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and 'unsecured creditor' is to be read accordingly (Insolvency Act 1986 s 248(a)); and 'security' means, in relation to England and Wales, any mortgage, charge, lien or other security (s 248(b)). For the meaning of 'connected' with a company see para 5 ante.

11 For these purposes, 'prescribed part' has the same meaning as it does in the Insolvency Act 1986 s 176A(2)(a) (as added) (see para 322 post): Insolvency Rules 1986, SI 1986/1925, r 13.13(15) (added by SI 2003/1730).

12 Ie pursuant to the Insolvency Act 1986 s 176A (as added) (see para 322 post).

13 Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(ca) (r 1.3(2)(ca), (4) added by SI 2003/1730). The estimate is required to the best of the directors' knowledge and belief (Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(ca) (as so added)); this requirement is subject to the proviso that nothing is to be taken as requiring the estimate to include any information the disclosure of which could seriously prejudice the commercial interests of the company (r 1.3(2)(ca), (4) (as so added)). If such information is excluded from the calculation, the estimate must be accompanied by a statement to that effect: r 1.3(4) (as so added). Note that where a proposal for a voluntary arrangement is made by a liquidator or administrator, r 1.3(2)(ca) (as added) does not apply to the liquidator or administrator's proposal, a different requirement being substituted: see r 1.10(1)(a), (3) (as amended and added); and para 116 post.

14 Ibid r 1.3(2)(d).

15 Ibid r 1.3(2)(e).

16 Ibid r 1.3(2)(f).

17 Ibid r 1.3(2)(fa) (added by SI 2002/2712). The addition of this provision does not apply where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

18 Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(g). As to fees, costs, charges and expenses see further para 141 post.

19 Ibid r 1.3(2)(h). As to the supervisor of the arrangement see para 132 et seq post.

20 Ibid r 1.3(2)(j).

21 Ibid r 1.3(2)(k).

22 Ibid r 1.3(2)(l).

23 Ibid r 1.3(2)(m).

24 Ibid r 1.3(2)(n).

25 Ibid r 1.3(2)(o) (amended by SI 2002/1307).

26 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

27 For the meaning of 'authorised person' see para 98 note 7 ante.

28 Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(p) (substituted by SI 2002/2712). Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): (1) there is no requirement to state whether the proposed supervisor is an authorised person in relation to the company; and (2) the directors are required to confirm, so far as they are aware, the person's qualification to act as an insolvency practitioner in relation to

the company: Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(p); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

29 le EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings (see para 46 et seq ante).

30 Insolvency Rules 1986, SI 1986/1925, r 1.3(2)(q) (added by SI 2002/1307).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

109 Preparation and contents of proposal

NOTE 3--SI 1986/1925 r 1.2 revoked: SI 2010/686.

NOTE 11--SI 1986/1925 r 13.13(16)-(19) added: SI 2010/686.

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110. Notice to intended nominee.

Where voluntary arrangements are proposed by the directors of a company¹ and there are no proposals for a moratorium², the directors must give to the intended nominee written notice of their proposal³. The notice, accompanied by a copy of the proposal, must be delivered either to the nominee himself or to a person authorised to take delivery of documents on his behalf⁴. If the intended nominee agrees to act, he must cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date, and he has 28 days from that date to submit his report to the court⁵.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante. As to the application of certain of these provisions in a modified form where a voluntary arrangement is proposed by a liquidator or administrator who is not also the intended nominee see para 118 post. For the meaning of 'the nominee' see para 71 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 1.4(1). In the case of a proposed voluntary arrangement relating to a limited liability partnership, notice of the proposal is required to be given by the designated members of the partnership: see the Insolvency Act 1986 s 2(3); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

4 Insolvency Rules 1986, SI 1986/1925, r 1.4(2).

5 Insolvency Act 1986 s 2(2); Insolvency Rules 1986, SI 1986/1925, r 1.4(3). For the nominee's duty to submit a report to the court see the Insolvency Act 1986 s 2(2); and para 113 post. The copy of the notice endorsed under the Insolvency Rules 1986, SI 1986/1925, r 1.4(3) must be returned by the nominee forthwith to the directors at an address specified by them in the notice for that purpose: r 1.4(4).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(ii) Proposal by Directors where Nominee is neither Liquidator nor Administrator/111. Statement of affairs.

111. Statement of affairs.

Where voluntary arrangements are proposed by the directors of a company¹ and there are no proposals for a moratorium², the directors must, within seven days after their proposal is delivered to the nominee³, or within such longer time as the nominee may allow, deliver to him a statement of the company's affairs⁴. The statement must comprise the following particulars:

- 176 (1) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category⁵;
- 177 (2) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount, and of how and when the security⁶ was created⁷;
- 178 (3) the names and addresses of the company's preferential creditors⁸, with the amounts of their respective claims⁹;
- 179 (4) the names and addresses of the company's unsecured creditors¹⁰, with the amounts of their respective claims¹¹;
- 180 (5) particulars of any debts owed by or to the company to or by persons connected¹² with it¹³;
- 181 (6) the names and addresses of the company's members, with details of their respective shareholdings¹⁴;
- 182 (7) such other particulars, if any, as the nominee may in writing require to be furnished for the purposes of making his report to the court on the directors' proposal¹⁵.

The statement of affairs must be made up to a date not earlier than two weeks before the date of the notice¹⁶ to the nominee, although the nominee may allow an extension of that period to the nearest practicable date not earlier than two months before the date of the notice¹⁷. The statement must be certified as correct, to the best of their knowledge and belief, by two or more directors of the company, or by the company secretary and at least one director, other than the secretary himself¹⁸.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 See para 110 ante. For the meaning of 'the nominee' see para 71 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 1.5(1). The particulars contained in the statement of affairs submitted to the intended nominee at this stage should supplement or amplify, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal: see r 1.5(2); and para 109 ante. As to the statement of affairs where an administration order has been made see para 169 et seq post; and as to the statement of affairs in a winding up see paras 519 et seq, 947 post.

5 Ibid r 1.5(2)(a).

6 For the meaning of 'security' see para 109 note 10 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 1.5(2)(b).

8 For these purposes, references to preferential debts and preferential creditors are to be read in accordance with the Insolvency Act 1986 s 386 (as amended) (see para 763 post): Insolvency Rules 1986, SI 1986/1925, r 1.5(2)(c).

9 Ibid r 1.5(2)(c).

10 For the meaning of 'unsecured creditor' see para 109 note 10 ante.

11 Insolvency Rules 1986, SI 1986/1925, r 1.5(2)(d).

12 For the meaning of 'connected' with a company see para 5 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 1.5(2)(e).

14 Ibid r 1.5(2)(f). As to the meaning of 'member' see para 72 note 9 ante.

15 Ibid r 1.5(2)(g). For the meaning of 'the court' see para 4 ante. As to the nominee's report to the court see para 113 post.

16 Ie under ibid r 1.4: see para 110 ante.

17 Ibid r 1.5(3). If the nominee allows an extension, he must give his reasons in his report to the court on the directors' proposal: r 1.5(3).

18 Ibid r 1.5(4).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

111 Statement of affairs

TEXT AND NOTES 4, 18--See SI 1986/1925 r 1.5(1) amended, r 1.5(4) substituted: SI 2010/686.

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112. Additional disclosure for assistance of nominee.

Where voluntary arrangements are proposed by the directors of a company¹ in circumstances where there are no proposals for a moratorium² and it appears to the nominee that he cannot properly prepare his report³ on the basis of information in the directors' proposal and statement of affairs⁴, he may call on the directors to provide him with:

- 183 (1) further and better particulars as to the circumstances in which, and the reasons why, the company is insolvent or, as the case may be, threatened with insolvency⁵;
- 184 (2) particulars of any previous proposals which have been made⁶ in respect of the company⁷;
- 185 (3) any further information with respect to the company's affairs which he thinks necessary for the purposes of his report⁸.

The nominee may also call on the directors to inform him, with respect to any person who is, or at any time in the two years preceding the notice to him⁹ has been, a director or officer¹⁰ of the company, whether and in what circumstances, in those two years or previously, that person has been concerned in the affairs of any other company, whether or not incorporated in England and Wales, which has become insolvent¹¹, or has himself been adjudged bankrupt or entered into an arrangement with his creditors¹².

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante. As to the application of certain of these provisions in a modified form where a voluntary arrangement is proposed by a liquidator or administrator who is not also the intended nominee see para 118 post. For the meaning of 'the nominee' see para 71 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 As to the nominee's duty to report to the court see para 113 post. For the meaning of 'the court' see para 4 ante.

4 As to the directors' statement of affairs see para 111 ante. For the purposes of enabling the nominee to consider the directors' proposal and prepare his report on it, the directors must give him access to the company's accounts and records: Insolvency Rules 1986, SI 1986/1925, r 1.6(3).

5 Ibid r 1.6(1)(a).

6 I.e. under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended).

7 Insolvency Rules 1986, SI 1986/1925, r 1.6(1)(b).

8 Ibid r 1.6(1)(c).

9 I.e. under ibid r 1.4: see para 110 ante.

10 For the meaning of 'officer' see para 690 post.

11 Insolvency Rules 1986, SI 1986/1925, r 1.6(2)(a).

12 Ibid r 1.6(2)(b).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(ii) Proposal by Directors where Nominee is neither Liquidator nor Administrator/113. Nominee's report on the proposal.

113. Nominee's report on the proposal.

Within 28 days, or such longer period as the court¹ may allow, after being given notice of a proposal for a voluntary arrangement by the directors of a company² in circumstances where there are no proposals for a moratorium³, the nominee must submit a report to the court⁴ stating:

- 186 (1) whether, in his opinion, the proposed arrangement has a reasonable prospect of being approved and implemented⁵;
- 187 (2) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal⁶; and
- 188 (3) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held⁷.

With his report to the court the nominee must deliver a copy of the directors' proposal⁸ and a copy or summary of the company's statement of affairs⁹. If the nominee makes known his opinion that the directors' proposal has a reasonable prospect of being approved and implemented and that meetings of the company and its creditors should be summoned, his report must have annexed to it his comments on the proposal, and if his opinion is otherwise, he must give his reasons for that opinion¹⁰.

1 For the meaning of 'the court' see para 4 ante.

2 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante. As to the application of certain of these provisions in a modified form where a voluntary arrangement is proposed by the liquidator or administrator who is not also the intended nominee see para 118 post. For the meaning of 'the nominee' see para 71 ante.

3 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

4 For the purposes of enabling the nominee to consider the directors' proposal and prepare his report on it, the directors must give him access to the company's accounts and records: Insolvency Rules 1986, SI 1986/1925, r 1.6(3). The court must cause the nominee's report to be endorsed with the date on which it is filed in court: r 1.7(3). Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the file: r 1.7(3). The nominee must send a copy of his report, and of his comments, if any, to the company: r 1.7(4). As to the meaning of 'member' see para 72 note 9 ante.

For these purposes, 'business day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under or by virtue of the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321): Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.13(1) (r 13.13(1) substituted by SI 1999/1022). 'Business day' has the same meaning in the Insolvency Rules 1986, SI 1986/1925, r 4.10 (see para 2221 post), r 4.11 (see para 462 post), and r 4.20 (see para 485 post): rr 13.1, 13.13(1) (as so substituted).

5 Insolvency Act 1986 s 2(1), (2)(a) (s 2(2)(a) amended, and s 2(2)(aa) added, by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 3(a)). The nominee's report is not, however, required to state his opinion on this matter if he has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

6 Insolvency Act 1986 s 2(2)(aa) (as renumbered: see note 5 supra). As to summoning such meetings and the appropriate time, date and place see s 3; and paras 115, 120 post. In the case of a proposed voluntary arrangement relating to a limited liability partnership, the nominee's report should state whether, in the nominee's opinion, a meeting for the members of the partnership and its creditors should be summoned: see s 2(2)(aa) (as so renumbered); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. In relation to a building society, any reference to a meeting of the society in the Insolvency Act 1986 s 2 (as amended) is a reference to a meeting to both shareholding and borrowing members of the society and to a meeting of shareholding members alone: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 8(a), (b) (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; Building Societies Act 1986 Sch 15A Pt I amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)).

7 Insolvency Act 1986 s 2(2)(b).

8 Insolvency Rules 1986, SI 1986/1925, r 1.7(1)(a). A copy of the directors' proposal so delivered may be delivered with amendments, if any, authorised under r 1.3(3) (see para 109 ante): r 1.7(1)(a).

9 Ibid r 1.7(1)(b). As to the statement of affairs see para 111 ante.

10 Ibid r 1.7(2) (amended by SI 2002/2712). Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), if he makes known his opinion that meetings of the company and its creditors should be summoned, he is required to annex his comments on the proposal, and if his opinion is otherwise, he must give his reasons for that opinion: Insolvency Rules 1986, SI 1986/1925, r 1.7(2); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

113 Nominee's report on the proposal

NOTE 6--Building Societies Act 1986 Sch 15A Pt I further amended: SI 2009/1941.

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114. Failure to submit report; replacement of nominee.

Where, in a case where voluntary arrangements are proposed by the directors of a company¹ and there are no proposals for a moratorium², either the nominee has failed to submit his report³ or has died, or it is impracticable or inappropriate for the nominee to continue to act as such, the court⁴ may direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner⁵, or authorised to act as nominee, in relation to the voluntary arrangement⁶. The person intending to propose the voluntary arrangement is entitled to apply for a direction in either circumstance⁷, while the nominee himself may also apply for a direction where it is required on the grounds that it is impracticable or inappropriate for him to continue to act as such⁸.

Where a person other than the nominee intends to apply to the court for the nominee to be replaced, he must give to the nominee at least seven days' notice of his application⁹, and where the nominee intends to apply for his own replacement, he must give at least seven days' notice of his application to the person intending to make the proposal¹⁰. No appointment of a replacement nominee can be made by the court unless there is filed in court a statement by the replacement nominee indicating his consent to act and that he is qualified to act as an insolvency practitioner in relation to the company or is an authorised person¹¹ in relation to the company¹².

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante. As to the application of certain of these provisions in a modified form where a voluntary arrangement is proposed by a liquidator or administrator who is not also the intended nominee see para 118 post. For the meaning of 'the nominee' see para 71 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 I.e. as required by the Insolvency Act 1986 s 2(2) (as amended) (see para 113 ante).

4 For the meaning of 'the court' see para 4 ante.

5 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

6 Insolvency Act 1986 s 2(1), (4) (s 2(1) amended by the Insolvency Act 2000, Sch 1 paras 1, 3; and the Insolvency Act 1986 s 2(4) substituted by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 3(b)). The court may not, however, direct the replacement of a nominee who has died, or direct the replacement of a nominee where it is impracticable or inappropriate for the nominee to continue to act as such, and in any event may not direct the replacement of the nominee with anyone other than another person qualified to act as an insolvency practitioner in relation to the company, if the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 1986 s 2(4) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

7 Insolvency Act 1986 s 2(4)(a), (b) (as substituted: see note 6 supra). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), the person intending to propose the voluntary arrangement may not apply for the replacement of a nominee who has died or for the replacement of a nominee where it is impracticable or inappropriate for the nominee to continue to act as such (ie he may only apply if the nominee has failed to deliver his report): s 2(4) (as originally enacted); Insolvency Act 2000

(Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1). In the case of a voluntary arrangement relating to a limited liability partnership, applications in either case may be made by the designated members of the partnership: see the Insolvency Act 1986 s 2(4)(a), (b) (as so substituted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'designated member' see para 109 note 3 ante.

8 Insolvency Act 1986 s 2(4)(b) (as substituted: see note 6 supra). The nominee cannot make an application on these (or any other) grounds if he has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): s 2(4) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

9 Insolvency Rules 1986, SI 1986/1925, r 1.8(1) (r 1.8 substituted by SI 2002/2712). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), this provision does not apply in a case where the nominee has died: Insolvency Rules 1986, SI 1986/1925, r 1.8 (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). See also note 6 supra.

10 Insolvency Rules 1986, SI 1986/1925, r 1.8(2) (as substituted: see note 9 supra). This provision does not apply if the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), because in those circumstances he has no power to apply to be replaced: r 1.8 (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2); and see note 7 supra.

11 For the meaning of 'authorised person' see para 98 note 7 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 1.8(3) (as substituted: see note 9 supra). This provision does not apply if the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): r 1.8 (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2); and see notes 5-9 supra.

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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115. Summoning of meetings.

Where voluntary arrangements are proposed by the directors of a company¹, there are no proposals for a moratorium², and the nominee³, not being the liquidator or administrator, has reported to the court⁴ that meetings of the company and of its creditors⁵ should be summoned to consider the proposal, the nominee must, unless the court otherwise directs, summon those meetings for the time, date and place proposed in his report⁶. The date on which such meetings are to be held must be not less than 14, nor more than 28, days from that on which the nominee's report is filed in court⁷.

Notices calling the meetings must be sent by the nominee at least 14 days before the day fixed for them to be held, in the case of the creditors' meeting, to all the creditors specified in the statement of affairs and any other creditors of the company of whose claim and address the nominee is otherwise aware⁸, and, in the case of the meeting of members of the company, to all persons who are, to the best of the nominee's belief, members of it⁹. Each such notice must specify the court¹⁰ to which the nominee's report has been delivered and must state the effect of the provisions dealing with requisite majorities of creditors at the creditors' meeting¹¹; and with each notice there must be sent a copy of the directors' proposal¹², a copy of the statement of affairs¹³ or, if the nominee thinks fit, a summary of it¹⁴, and the nominee's comments on the proposal¹⁵.

Where a notice is sent to a creditor in accordance with the rules, although not in fact received by him, but the creditor otherwise has notice of the meeting, the notice is valid and such a creditor is bound by the arrangement, if approved¹⁶. A person who has no actual notice of the creditors' meeting is not bound by the arrangement; constructive notice of a creditors' meeting is not by itself sufficient¹⁷.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see para 71 note 1 ante. As to the application of certain of these provisions in a modified form where a voluntary arrangement is proposed by a liquidator or administrator who is not also the intended nominee see para 118 post. For the meaning of 'the nominee' see para 71 ante.

2 I.e. a moratorium under the Insolvency Act 1986 s 1A (as added): Sch A1 para 1 (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4). See para 73 et seq ante.

3 For the meaning of 'the nominee' see para 71 ante.

4 For the meaning of 'the court' see para 4 ante.

5 I.e. such meetings as are referred to in the Insolvency Act 1986 s 2(2) (as amended) (see para 113 ante). In the case of a voluntary arrangement relating to a limited liability partnership, the meeting which may be summoned under these provisions is a meeting of creditors: see the Insolvency Act 1986 s 3(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

6 Ibid s 3(1). As to the appropriate time, date and place for the holding of a creditors' meeting see para 120 post.

7 Insolvency Rules 1986, SI 1986/1925, r 1.9(1). As to the filing of the nominee's report see r 1.7 (as amended); and para 113 ante.

8 Insolvency Act 1986 s 3(3); Insolvency Rules 1986, SI 1986/1925, r 1.9(2)(a). Notices to creditors must be sent out at least 14 days before the date fixed for the creditors' meeting if the arrangement is to bind the creditors; and the court will not retrospectively abridge the 14-day period: *Mytre Investments Ltd v Reynolds (No 2)* [1996] BPIR 464.

9 Insolvency Rules 1986, SI 1986/1925, r 1.9(2). As to the meaning of 'member' see para 72 note 9 ante.

10 For the meaning of 'the court' see para 4 ante.

11 In the Insolvency Rules 1986, SI 1986/1925, r 1.19(1), (3), (4): see para 125 post.

12 Ibid r 1.9(3)(a). As to the directors' proposal see para 109 ante.

13 See para 111 ante.

14 Insolvency Rules 1986, SI 1986/1925, r 1.9(3)(b). If a summary is sent it must include a list of creditors and the amount of their debts: r 1.9(3)(b).

15 Ibid r 1.9(3)(c).

16 *Beverley Group plc v McClue* [1995] 2 BCLC 407, [1995] BCC 751.

17 *Re A Debtor (No 64 of 1992)* [1994] 2 All ER 177, [1994] 1 WLR 264.

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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(iii) Proposal by Administrator or Liquidator

A. THE PROPOSAL

116. Preparation of proposal.

Where a company¹ is either in liquidation or administration and the liquidator or administrator proposes a voluntary arrangement², the proposal must specify all such matters as the directors³ of the company would be required to include in a proposal made by them⁴, along with such other matters, if any, as the liquidator or administrator considers appropriate for ensuring that members⁵ and creditors of the company are enabled to reach an informed decision on the proposal⁶. Where the company is in administration, the proposal must additionally specify the names and addresses of the company's preferential creditors⁷, with the amounts of their respective claims⁸. Where the company is being wound up by the court⁹, the liquidator must give notice of the proposal to the official receiver¹⁰. Where the proposal is being made by a liquidator or administrator who is not the nominee for the proposed arrangement, the liquidator or administrator must provide with the proposal a copy of the company's statement of affairs¹¹.

1 As to the meaning of 'company' see para 71 note 1 ante.

2 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(b), (c) (r 1.1(2)(b) amended, and r 1.1(2)(c) added, by SI 2003/1730). For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. These provisions apply whether or not the liquidator or administrator is himself the nominee in relation to the proposed arrangement. For further provision where the liquidator or administrator is the nominee for the proposed arrangement see para 117 post. For further provision where the liquidator or administrator is not the nominee see para 118 post. For the meaning of 'the nominee' see para 71 ante.

3 As to the meaning of 'director' see para 5 note 2 ante.

4 Insolvency Rules 1986, SI 1986/1925, rr 1.10(1)(a), 1.12(1), (3) (r 1.12(3) amended by SI 1987/1919). The matters which the directors should specify in a proposal made by them are those contained in the Insolvency Rules 1986, SI 1986/1925, rr 1.2, 1.3 (r 1.3 as amended): see para 109 ante. A proposal made by a liquidator or administrator is not, however, required to contain an estimate of the value of the prescribed part in the event that the company should go into liquidation if the proposal is not accepted (ie under r 1.3(2)(ca) (as added) (see para 109 ante)): rr 1.10(1)(a), 1.12(3) (r 1.10(1)(a) amended by SI 2003/1730; Insolvency Rules 1986, SI 1986/1925, r 1.12(3) as so amended). Instead, the proposal must include a statement which: (1) contains an estimate, to the best of the liquidator or administrator's knowledge and belief, of the value of the prescribed part (whether or not he proposes to make an application to the court under the Insolvency Act 1986 s 176A(5) (as added) (see para 322 post) or s 176A(3) (as added) applies (see para 322 post)), and an estimate of the value of the company's net property (Insolvency Rules 1986, SI 1986/1925, rr 1.10(3)(a), 1.12(3) (r 1.10(3), (4) added by SI 2003/1730); Insolvency Rules 1986, SI 1986/1925 r 1.12(3) as so amended); and (2) states whether and, if so, why, the administrator or liquidator proposes to make an application to court under the Insolvency Act 1986 s 176A(5) (as added) (see para 322 post) (Insolvency Rules 1986, SI 1986/1925, r 1.10(3)(b) (as so added), r 1.12(3) (as so amended)). Nothing is to be taken, however, as requiring any such estimate to include any information the disclosure of which could seriously prejudice the commercial interests of the company, although if such information is excluded from the calculation the statement must be accompanied by a statement to that effect: rr 1.10(4) (as so added), 1.12(3) (as so amended). For the meaning of 'prescribed part' see para 109 note 11 ante.

5 As to the meaning of 'member' see para 72 note 9 ante.

6 Insolvency Rules 1986, SI 1986/1925, rr 1.10(1)(b), 1.12(3) (r 1.12(3) as amended: see note 4 supra).

7 For these purposes, references to preferential creditors are to be read in accordance with the Insolvency Act 1986 s 386 (as amended) (see para 763 post): Insolvency Rules 1986, SI 1986/1925, r 1.10(1)(a) (amended by SI 1987/1919).

8 Insolvency Rules 1986, SI 1986/1925, rr 1.10(1)(a), 1.12(3) (as amended: see note 4 supra).

9 For the meaning of 'the court' see para 4 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 1.10(2). As to the official receiver see para 503 et seq post.

11 Ibid r 1.12(5).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

116 Preparation of proposal

TEXT AND NOTES--SI 1986/1925 r 1.10(1) substituted: SI 2010/686.

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B. FURTHER STEPS WHERE LIQUIDATOR OR ADMINISTRATOR IS HIMSELF THE NOMINEE

117. Summoning of meetings.

Where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee¹, he must summon meetings of the company² and of its creditors to consider the proposal for such a time, date and place as he thinks fit³. He must fix a venue⁴ for the creditors' meeting and the company meeting, and give at least 14 days' notice of the meetings⁵. In the case of the creditors' meeting, notice must be given to all the creditors specified in the company's statement of affairs and to any other creditors of whose claim and address the nominee is aware⁶. In the case of the company meeting, notice must be given to all persons who are, to the best of the nominee's belief, members of the company⁷.

Each such notice must state the effect of the provisions dealing with requisite majorities of creditors at the creditors' meeting⁸; and with each notice there must be sent a copy of the proposal⁹ and a copy of the statement of affairs¹⁰ or, if the nominee thinks fit, a summary of it¹¹.

1 He is in accordance with the Insolvency Rules 1986, SI 1986/1925, rr 1.1(1), (2)(b) (amended by SI 2003/1730). For the meaning of 'voluntary arrangement' see para 71 ante. For the meaning of 'the nominee' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the preparation of proposals by the administrator or liquidator see para 116 ante. As to the applicable further provisions where the liquidator or administrator is not himself the nominee see para 118 post.

2 As to the meaning of 'company' see para 71 note 1 ante.

3 Insolvency Act 1986 s 3(2). As to the appropriate time, date and place see further para 120 post. In the case of a voluntary arrangement relating to a limited liability partnership where a proposal is made by an administrator or liquidator of the partnership, the meeting which may be summoned under these provisions is a meeting of the members of the partnership: see the Insolvency Act 1986 s 3(2); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 For the meaning of 'venue' see para 91 note 7 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 1.11(1).

6 Insolvency Act 1986 s 3(3); Insolvency Rules 1986, SI 1986/1925, r 1.11(1)(a).

7 Ibid r 1.11(1)(b). As to the meaning of 'member' see para 72 note 9 ante.

8 Ibid r 1.11(2). As to the provisions dealing with requisite majorities of creditors at the creditors' meeting see r 1.19(1), (3), (4); and para 125 post.

9 Ibid r 1.11(2)(a). As to the proposal see para 116 ante.

10 As to the statement of affairs where an administration order has been made see para 169 et seq post; and as to the statement of affairs in a winding up see paras 519 et seq, 947 post.

11 Insolvency Rules 1986, SI 1986/1925, r 1.11(2)(b). If a summary is sent it must include a list of creditors and the amount of their debts: r 1.11(2)(b).

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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C. FURTHER STEPS WHERE LIQUIDATOR OR ADMINISTRATOR IS NOT HIMSELF THE NOMINEE

118. Notification of nominee and summoning of meetings.

Where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee¹, he must give notice to the intended nominee in the same manner as is required of the directors² in the case of a proposal by them³. The intended nominee must then make a report on the proposal⁵, and summon the necessary meetings⁶, in the same manner as he would be required to do in respect of a proposal made by the directors⁷, he is also liable to be replaced under the same terms as he is when dealing with a directors' proposal⁸.

1 In accordance with the Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(c) (r 1.1(2)(c) substituted by SI 2002/2712). For the meaning of 'voluntary arrangement' see para 71 ante. For the meaning of 'the nominee' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the preparation of proposals by the administrator or liquidator see para 116 ante. As to the applicable further provisions where the liquidator or administrator is himself the nominee see para 117 ante.

If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), the circumstances under which the liquidator or administrator is required to proceed in accordance with these provisions are those where the nominee is an insolvency practitioner other than the liquidator or the administrator: Insolvency Rules 1986, SI 1986/1925, r 1.1(1), (2)(c); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

2 As to the meaning of 'director' see para 5 note 2 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 1.12(1), (2). As to the giving of notice to the intended nominee see r 1.4(1); and para 110 ante. The notice, accompanied by a copy of the proposal, must be delivered either to the nominee himself or to a person authorised to take delivery of documents on his behalf: rr 1.4(2), 1.12(2). If the intended nominee agrees to act, he must cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date: rr 1.4(3), 1.12(2). The copy of the notice so endorsed must be returned by the nominee forthwith to the directors at an address specified by them in the notice for that purpose: rr 1.4(4), 1.12(2).

Where the company is being wound up by the court, the liquidator or administrator must send a copy of the proposal to the official receiver, accompanied by the name and address of the insolvency practitioner or (except where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies)) the authorised person who has agreed to act as nominee: r 1.12(6) (amended by SI 2002/2712). For the meaning of 'the court' see para 4 ante. As to the official receiver see para 503 et seq post. For the meaning of 'authorised person' see para 98 note 7 ante.

5 As to the making of the nominee's report see the Insolvency Rules 1986, SI 1986/1925, r 1.7; and para 113 ante. The nominee may request from the liquidator or administrator such further particulars as he would be entitled to request of the directors for the purpose of enabling him to prepare his report: r 1.12(4) (see r 1.6; and (reading references to the directors as references to the liquidator or administrator) para 112 ante).

6 As to the summoning of meetings see *ibid* r 1.9; and para 115 ante.

7 *Ibid* r 1.12(7).

8 *Ibid* r 1.12(7). As to the replacement of the nominee see r 1.8 (as substituted); and para 114 ante.

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(iv) Consideration of the Proposal

A. MEETINGS OF COMPANY'S CREDITORS AND MEMBERS

119. Meetings to be conducted in accordance with the Insolvency Rules.

Each of the meetings summoned to consider a proposal for a voluntary arrangement¹ must be conducted in accordance with the Insolvency Rules 1986². Any adjournment of the meetings must similarly comply³. A decision taken⁴ at a meeting is not, however, invalidated by any irregularity at or in relation to the meeting⁵.

1 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

2 See the Insolvency Act 1986 s 4(5); the Insolvency Rules 1986, SI 1986/1925, rr 1.13-1.29 (as amended); and para 120 et seq post. In the case of a voluntary arrangement relating to a limited liability partnership, there is only one meeting: see para 123 note 3 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. Subject to this, these provisions apply to all proposals for voluntary arrangements whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator (whether or not also acting as nominee): r 1.1(1), (2)(d). As to the meaning of 'company' see para 71 note 1 ante. As to moratoriums see para 73 et seq ante. As to the preparation of proposals by the directors see paras 109-115 ante. As to the preparation of proposals by liquidators or administrators see paras 116-118 ante.

3 *Re Symes (a debtor), Kent Carpets Ltd v Symes* [1995] 2 BCLC 651, [1996] BCC 137.

4 If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), the reference in the text to 'a decision taken' is to be read as a reference to 'an approval given': see the Insolvency Act 1986 s 6(7); and the Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

5 Insolvency Act 1986 s 6(7) (amended by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 7(1), (8)). This is subject to the right to challenge decisions under the Insolvency Act 1986 s 6 (as amended) (see para 135 et seq post): s 6(7) (as so amended).

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

119 Meetings to be conducted in accordance with the Insolvency Rules

NOTES--As to the representation of corporations at meetings, see the Insolvency Act 1986 ss 434A, 434B (added by SI 2008/948).

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120. Summoning of meetings; proxies.

The person summoning the creditors' meeting and the company meeting¹ for the purposes of considering a proposal for voluntary arrangements must have regard primarily to the convenience of the creditors in fixing the venue². Meetings must in each case be summoned for commencement between 10.00 and 16.00 hours on a business day³. The meetings may be held on the same day or on different days⁴. If held on the same day, the meetings must be held in the same place, but in either case the creditors' meeting must be fixed for a time in advance of the company meeting⁵. Where the meetings are not held on the same day, they must be held within seven days of each other⁶. With every notice summoning either meeting there must be sent out forms of proxy⁷.

1 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante. The person summoning the meetings is known for these purposes as 'the convener': Insolvency Rules 1986, SI 1986/1925, r 1.13(1) (r 1.13 substituted by SI 2003/1730).

In the case of a voluntary arrangement relating to a limited liability partnership, there is only one meeting: see the Insolvency Act 1986 s 4(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

2 Insolvency Rules 1986, SI 1986/1925, r 1.13(1) (as substituted: see note 1 supra). For the meaning of 'venue' see para 91 note 7 ante. The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

3 Ibid r 1.13(2) (as substituted: see note 1 supra). For the meaning of 'business day' see para 113 note 4 ante.

4 Ibid r 1.13(3) (as substituted: see note 1 supra).

5 Ibid r 1.13(3) (as substituted: see note 1 supra).

6 Ibid r 1.13(4) (as substituted: see note 1 supra).

7 Ibid r 1.13(5) (as substituted: see note 1 supra). For the prescribed form of proxy see rr 1.13, 12.7, Sch 4 Form 8.1. The provisions relating to proxies and company representation are the same as those which apply to meetings in a winding up: see para 657 et seq post; but see also paras 121, 125 post.

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121. The chairman at meetings.

At both the creditors' meeting and the company¹ meeting, and at any combined meeting², the convener³ must be chairman⁴. If for any reason he is unable to attend, the convener may nominate another person to act as chairman in his place⁵; a person so nominated must, however, be either a person qualified to act as an insolvency practitioner⁶ in relation to the company⁷, an authorised person⁸ in relation to the company⁹, or an employee of the convener or his firm who is experienced in insolvency matters¹⁰.

The chairman may not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor¹¹ of the proposed voluntary arrangement, unless the proxy specifically directs him to vote in that way¹².

1 As to the meaning of 'company' see para 71 note 1 ante.

2 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

In the case of a voluntary arrangement relating to a limited liability partnership, there is only one meeting: see the Insolvency Act 1986 s 4(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

3 I.e. the person summoning the meeting: see para 120 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 1.14(1). The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

5 Ibid r 1.14(2).

6 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

7 Insolvency Rules 1986, SI 1986/1925, r 1.14(2)(a) (r 1.14(2)(a), (b) substituted, and r 1.14(2)(c) added, by SI 2002/2712).

8 For the meaning of 'authorised person' see para 98 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 1.14(2)(b) (as substituted: see note 7 supra). The nominated person may not be an authorised person in relation to the company if the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

10 Insolvency Rules 1986, SI 1986/1925, r 1.14(2)(c) (as added: see note 7 supra).

11 As to the supervisor see para 132 et seq post.

12 Insolvency Rules 1986, SI 1986/1925, r 1.15. As to the position where the chairman uses a proxy contrary to this provision see para 126 note 5 post.

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122. Attendance by company officers.

The convener¹ must give at least 14 days' notice to attend meetings² to all directors of the company³ and to any persons in whose case the convener thinks that their presence is required as being officers⁴ of the company, or as having been directors or officers of it at any time in the two years immediately preceding the date of the notice⁵. The chairman⁶ may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it, whether or not a notice to attend the meeting has been sent to the person excluded⁷.

1 le the person summoning the meetings: see para 120 note 1 ante.

2 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

In the case of a voluntary arrangement relating to a limited liability partnership, there is only one meeting: see the Insolvency Act 1986 s 4(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

3 Insolvency Rules 1986, SI 1986/1925, r 1.16(1)(a). As to the meaning of 'company' see para 71 note 1 ante. The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

4 For the meaning of 'officer' see para 690 post.

5 Insolvency Rules 1986, SI 1986/1925, r 1.16(1)(b).

6 As to the chairman see para 121 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 1.16(2).

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B. DECISIONS OF MEETINGS; VOTING RIGHTS AND MAJORITIES

123. Decisions of meetings and modifications of the proposal.

The meetings of creditors and the company¹ summoned² to consider a proposed voluntary arrangement must decide whether to approve the arrangement, with or without modifications³. The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner⁴ or authorised to act as nominee in relation to the voluntary arrangement⁵; but they must not include any modification by virtue of which the proposal ceases to be a proposal⁶ for a voluntary arrangement⁷. A meeting may not approve any proposal or modification which affects the right of a secured creditor⁸ of the company to enforce his security⁹, except with the concurrence of the creditor concerned¹⁰. Nor may a meeting approve any proposal or modification under which¹¹ any preferential debt¹² of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts¹³, or a preferential creditor¹⁴ of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt¹⁵. The meeting may, however, approve such a proposal or modification with the concurrence of the preferential creditor concerned¹⁶.

The terms of any modifications made at the meetings are effective even if not reduced to writing, provided that there is a clear understanding of what the debtor company is submitting to the creditors for their approval¹⁷. Modifications to the arrangement after the meeting can be made only if permitted within the terms of the arrangement; and the court has inherent jurisdiction to direct such modifications¹⁸.

1 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

2 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

3 Insolvency Act 1986 s 4(1). As to the meaning of 'modifications' see para 84 note 5 ante. As to the effect of approval of a voluntary arrangement, and as to the creditors who may be bound, see para 131 post. In the case of a voluntary arrangement relating to a limited liability partnership, there is only one meeting: see s 4(1), (5); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. In such a case, if modifications to the proposal are proposed at the meeting the chairman must, before the conclusion of the meeting, ascertain from the partnership whether or not it accepts the proposed modifications; and if at that conclusion the partnership has failed to respond to a proposed modification it is presumed not to have agreed to it: see the Insolvency Act 1986 s 4(5A) (added by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3). For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

5 Insolvency Act 1986 s 4(2) (amended by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 4). The modifications cannot include one conferring the functions proposed to be conferred on the nominee on another

person authorised to act as nominee in relation to the voluntary arrangement if the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

6 le a proposal such as is mentioned in the Insolvency Act 1986 s 1: see paras 71-72 ante.

7 Ibid s 4(2) (proviso).

8 For the meaning of 'secured creditor' see para 109 note 10 ante.

9 For the meaning of 'security' see para 109 note 10 ante.

10 Insolvency Act 1986 s 4(3).

11 This provision does not preclude the approval of a voluntary arrangement 'as a result of which' ibid s 4(4) (a) or s 4(4)(b) is infringed, but only one 'under which' they are infringed: *IRC v Wimbledon Football Club Ltd* [2004] EWCA Civ 655, 148 Sol Jo LB 697, [2004] All ER (D) 437 (May).

12 References to preferential debts and preferential creditors are to be read in accordance with the Insolvency Act 1986 s 386 (as amended) (see para 763 post): s 4(7).

13 Ibid s 4(4)(a).

14 See note 11 supra.

15 Insolvency Act 1986 s 4(4)(b).

16 Ibid s 4(4).

17 *Doorbar v Alltime Securities Ltd* [1995] 1 BCLC 316, sub nom *Re A Debtor (No 162 of 1993)*, *Doorbar v Alltime Securities Ltd* [1994] BCC 994; affd [1996] 2 All ER 948, [1996] 1 WLR 456, CA.

18 *Re FMS Financial Management Services Ltd* (1988) 5 BCC 191.

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123 Decisions of meetings and modifications of the proposal

NOTE 11--*IRC v Wimbledon*, cited, reported: [2005] 1 BCLC 66.

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124. Creditors' voting rights.

Every creditor who was given notice of the creditors' meeting¹ is entitled to vote at the meeting or any adjournment of it². Votes are calculated according to the amount of the creditor's debt as at the date of the meeting or, where the company³ is being wound up or is in administration, the date of its going into liquidation⁴ or, as the case may be, when it entered administration⁵. Creditors whose claims are partly secured may vote with respect to the unsecured part of their claim⁶. A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained; and for the purposes of voting, but not otherwise, his debt is valued at £1 unless the chairman agrees to put a higher value on it⁷. At any creditors' meeting the chairman⁸ must ascertain the entitlement of persons wishing to vote and must admit or reject their claims accordingly; and the admission or rejection of a claim may be in whole or in part⁹. If the chairman is in doubt whether a claim should be admitted or rejected, he must mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained¹⁰.

The chairman's decision on any of these matters¹¹ is subject to appeal to the court¹² by any creditor or member of the company¹³.

1 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 1.17(1) (r 1.17 substituted, and r 1.17A added, by SI 2002/2712). The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

3 As to the meaning of 'company' see para 71 note 1 ante.

4 For the meaning of 'go into liquidation' see para 9 note 3 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 1.17(2) (as substituted (see note 2 supra); and amended by SI 2003/1730). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), votes must be calculated according to the amount of the creditor's debt as at the date of the meeting or, where the company is being wound up or is subject to an administration order, the date of its going into liquidation or, as the case may be, of the administration order: Insolvency Rules 1986, SI 1986/1925, r 1.17(2); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

6 *Re a Debtor (Nos 31/32/33 of 1993)*, *Calor Gas Ltd v Piercy* [1994] 2 BCLC 321, [1994] BCC 69.

7 Insolvency Rules 1986, SI 1986/1925, r 1.17(3) (as substituted: see note 2 supra). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), a creditor may not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put

upon the debt an estimated minimum value for the purpose of entitlement to vote: r 1.17(3) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). It is sufficient for these purposes for the chairman to express a willingness to assess an estimated minimum amount of the claim of a creditor who is present or represented rather than to arrive at any agreement with the creditor on the estimated minimum value of the claim; and a creditor with an unliquidated or unascertained claim cannot frustrate the arrangement by staying away from the creditors' meeting: *Doorbar v Alltime Securities Ltd* [1995] 1 BCLC 316, sub nom *Re A Debtor (No 192 of 1993)*, *Doorbar v Alltime Securities Ltd* [1994] BCC 994 (affd [1996] 2 All ER 948, [1996] 1 WLR 456, CA); *Beverly Group plc v McClue* [1995] 2 BCLC 407, [1995] BCC 751; *Re Cancel Ltd* [1996] 1 All ER 37, [1996] 1 BCLC 100.

As to secured creditors and preferential creditors see para 123 ante; and as to debts secured by bills of exchange etc see para 125 post.

8 As to the chairman see para 121 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 1.17A(1), (2) (as added: see note 2 supra). Similar provisions apply if the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): see r 1.17(4) (as originally enacted); and the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

10 Insolvency Rules 1986, SI 1986/1925, r 1.17A(4) (as added: see note 2 supra). Similar provisions apply if the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies): see r 1.17(6) (as originally enacted); and the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

This procedure is the proper procedure to follow in relation to disputed debts: *Re a Debtor (No 222 of 1990)*, *ex p Bank of Ireland* [1992] BCLC 137.

11 Ie under the Insolvency Rules 1986, SI 1986/1925, r 1.17(3) (as substituted) and r 1.17A (as added): see the text and notes 7-10 supra.

12 For the meaning of 'the court' see para 4 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 1.17A(3) (as added: see note 2 supra). As to the meaning of 'member' see para 72 note 9 ante. An application to the court by way of appeal against the chairman's decision may not be made after the end of the period of 28 days beginning with the first day on which the report required by the Insolvency Act 1986 s 4(6) (see para 129 post) has been made to the court: Insolvency Rules 1986, SI 1986/1925, r 1.17A(6) (as so added). If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just; but the court's power to make such an order is exercisable only if it considers that the matter is such as gives rise to unfair prejudice or material irregularity: r 1.17A(5) (as so added). The chairman is not personally liable for any costs incurred by any person in respect of an appeal to the court under these provisions (r 1.17A(7) (as so added)), although he may be held liable to pay all or part of the costs of other legal proceedings arising out of his inadequate discharge of his duties where he is responsible for a material irregularity and where his conduct falls significantly below the standards of a licensed insolvency practitioner (*Re Mohammed Naeem (a bankrupt) (No 18 of 1988)* [1990] 1 WLR 48; *Re Cranley Mansions Ltd* [1994] 1 WLR 1610, [1995] 1 BCLC 290; *Re a Debtor (No 222 of 1990)*, *ex p Bank of Ireland (No 2)* [1993] BCLC 233). Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003, rights of appeal exist under and in accordance with the Insolvency Rules 1986, SI 1986/1925, r 1.17(5), (7)-(9) (as originally enacted): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(iv) Consideration of the Proposal/B. DECISIONS OF MEETINGS; VOTING RIGHTS AND MAJORITIES/125. Requisite majorities at creditors' meetings.

125. Requisite majorities at creditors' meetings.

For any resolution approving any proposal for a voluntary arrangement¹ or a modification of such a proposal² to pass at a creditors' meeting³ there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy⁴ and voting on the resolution⁵. Any other resolution proposed at a creditors' meeting requires a majority in excess of one-half in value⁶.

A creditor's vote in respect of any claim or part of a claim is to be left out of account⁷ if:

- 189 (1) written notice of the claim was not given, either at the meeting or before it, to the chairman or convener⁸;
- 190 (2) the claim or part is secured⁹;
- 191 (3) the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note¹⁰.

A resolution is invalid if those voting against it include more than half in value of the creditors, counting only those creditors:

- 192 (a) to whom notice of the meeting was sent¹¹;
- 193 (b) whose votes are not to be left out of account¹²; and
- 194 (c) who are not, to the best of the chairman's belief, persons connected with the company¹³.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante.

2 As to the meaning of 'modifications' see para 84 note 5 ante. As to the modifications which are permissible see para 123 ante.

3 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

4 As to the applicable provisions relating to proxies and representation see para 120 ante. If the chairman uses a proxy contrary to the Insolvency Rules 1986, SI 1986/1925, r 1.15 (see para 98 ante), his vote with that proxy does not count towards any majority under these provisions: r 1.19(6). As to the chairman see para 121 ante.

5 Ibid r 1.19(1). The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

6 Ibid r 1.19(2).

7 It is for the chairman of the meeting to decide whether a vote is to be left out of account in accordance with these provisions: *ibid* r 1.19(5)(a). An appeal against the decision of the chairman under these provisions and the provisions of r 1.19(4)(c) (see the text and note 13 *infra*) lies to the court: r 1.19(7) (substituted by SI 2002/2712). The applicable provisions regarding such an appeal are the Insolvency Rules 1986, SI 1986/1925, rr 1.17A(5)-(7) (as added) (see r 1.19(7) (as so substituted)), except in a case where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 *ante* applies), in which event the applicable provisions are r 1.17(7)-(9) (as originally enacted) (see r 1.19(7) (as originally enacted)); the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2)). See further para 124 note 13 *ante*.

8 Insolvency Rules 1986, SI 1986/1925, r 1.19(3)(a). 'The convener' is the person summoning the meetings: see para 120 note 1 *ante*.

9 *Ibid* r 1.19(3)(b). For the meaning of 'secured creditor' see para 109 note 10 *ante*. As to the voting rights of secured creditors see para 124 *ante*.

10 *Ibid* r 1.19(3)(c). A creditor's vote in respect of any claim or part of a claim is left out of account in these circumstances unless the creditor is willing: (1) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made or, in the case of a company, which has not gone into liquidation, as a security in his hands (r 1.19(3)(c)(i)); and (2) to estimate the value of the security and, for the purpose of entitlement to vote, but not of any distribution under the arrangement, to deduct it from his claim (r 1.19(3)(c)(ii)). For the meaning of 'go into liquidation' see para 9 note 3 *ante*.

11 *Ibid* r 1.19(4)(a).

12 *Ibid* r 1.19(4)(b). The reference in the text to those creditors whose votes are not to be left out of account is a reference to those whose votes are not to be left out of account under r 1.19(3) (see the text and notes 7-10 *supra*).

13 *Ibid* r 1.19(4)(c). For the meaning of 'connected' with a company see para 5 *ante*. It is for the chairman of the meeting to decide whether a person is a connected person for these purposes; and in such a case the chairman is entitled to rely on the information provided by the company's statement of affairs or otherwise in accordance with the rules relating to company voluntary arrangements: r 1.19(5)(b). The chairman's decision is subject to appeal: see note 7 *supra*.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

125 Requisite majorities at creditors' meetings

TEXT AND NOTES 1-6--SI 1986/1925 r 1.19(1), (2) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(iv) Consideration of the Proposal/B. DECISIONS OF MEETINGS; VOTING RIGHTS AND MAJORITIES/126. Voting and requisite majorities at company meetings.

126. Voting and requisite majorities at company meetings.

Members of the company¹ at their meeting² vote according to the rights attaching to their shares³ respectively in accordance with the articles of the company⁴. Subject to any express provision made in the articles, at a company meeting any resolution is to be regarded as passed if voted for by more than one-half in value of the members present in person or by proxy and voting on the resolution⁵.

1 As to the meaning of 'member' see para 72 note 9 ante. As to the meaning of 'company' see para 71 note 1 ante.

2 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. As to combined meetings see para 127 post. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

3 References to a person's shares include any other interest which he may have as a member of the company: Insolvency Rules 1986, SI 1986/1925, r 1.18(3). The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

4 Ibid r 1.18(1). A member is entitled to vote either for or against the proposal or any modification of it even if no voting rights attach to his shares if the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), although any vote accordingly cast is left out of account in determining whether a majority for any resolution has been obtained: rr 1.18(2), 1.20(2) (revoked by SI 2002/2712); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the meaning of 'modifications' see para 84 note 5 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 1.20(1) (amended by SI 1987/1919). The value of members is determined by reference to the number of votes conferred on each member by the company's articles: Insolvency Rules 1986, SI 1986/1925, r 1.20(1) (as so amended). If the chairman uses a proxy contrary to r 1.15 (see para 98 ante), his vote with that proxy does not count towards any majority for these purposes: r 1.20(3).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(iv) Consideration of the Proposal/B. DECISIONS OF MEETINGS; VOTING RIGHTS AND MAJORITIES/127. Proceedings to obtain agreement on the proposal.

127. Proceedings to obtain agreement on the proposal.

If the chairman¹ thinks fit, the creditors' meeting and the company meeting² may be held together³. The chairman may, and must if it is so resolved at the meeting in question, adjourn that meeting for not more than 14 days⁴. If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meetings were originally held⁵. If following any final adjournment of the creditors' meeting the proposal, with or without modifications⁶, has not been approved by the creditors, it is deemed rejected⁷.

1 As to the chairman see para 121 ante.

2 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 1.21(1) (r 1.21 substituted by SI 2002/2712). The substitution of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). In such circumstances, the procedure for obtaining agreement on the proposal is as follows: on the day on which the meetings of creditors and the company are held, they may from time to time be adjourned, and, if the chairman thinks fit for the purpose of obtaining the simultaneous agreement of the meetings to the proposal, with the same modifications, if any, the meetings may be held together: Insolvency Rules 1986, SI 1986/1925, r 1.21(1) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). If on that day the requisite majority for the approval of the voluntary arrangement, with the same modifications, if any, has not been obtained from both creditors and members of the company, the chairman may, and must if it is so resolved, adjourn the meetings for not more than 14 days (with the requirement that, if the proposal has been made by the directors, notice of the adjournment must be given by the nominee forthwith to the court): Insolvency Rules 1986, SI 1986/1925, r 1.21(2), (5) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meetings were originally held (Insolvency Rules 1986, SI 1986/1925, r 1.21(3) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2)); there must, however, be no adjournment of either meeting unless the other is also adjourned to the same business day (Insolvency Rules 1986, SI 1986/1925, r 1.21(4) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2)). If following any final adjournment of the meetings the proposal, with the same modifications, if any, is not agreed by both meetings, it is deemed rejected: Insolvency Rules 1986, SI 1986/1925, r 1.21(6) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the meaning of 'member' see para 72 note 9 ante.

The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

4 Ibid r 1.21(2) (as substituted: see note 3 supra). Any adjournment of the meetings must comply with the Insolvency Rules 1986, SI 1986/1925 (as amended): see *Re Symes (a debtor), Kent Carpets Ltd v Symes* [1995] 2 BCLC 651, [1996] BCC 137; and para 119 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 1.21(3) (as substituted: see note 3 supra). In the case of a proposal by the directors, if the meetings are adjourned, notice of the fact must be given by the nominee forthwith to the court: r 1.21(4) (as so substituted). For the meaning of 'the court' see para 4 ante.

6 As to the meaning of 'modifications' see para 84 note 5 ante. As to the modifications which are permissible see para 123 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 1.21(5) (as substituted: see note 3 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

127 Proceedings to obtain agreement on the proposal

TEXT AND NOTES--SI 1986/1925 r 1.21(4A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(iv) Consideration of the Proposal/B. DECISIONS OF MEETINGS; VOTING RIGHTS AND MAJORITIES/128. Resolutions to follow approval.

128. Resolutions to follow approval.

If the voluntary arrangement¹ is approved, with or without modifications², by the creditors' meeting³, a resolution may be taken by the creditors, where two or more supervisors are appointed⁴, on the question whether acts to be done in connection with the arrangement may be done by any one of them, or must be done by both or all⁵. If, at either the creditors' meeting or the company meeting, a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting, that person's written consent to act, unless he is present and then and there signifies his consent⁶, and his written confirmation that he is qualified to act as an insolvency practitioner⁷, or is an authorised person⁸, in relation to the company⁹.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante.

2 As to the meaning of 'modifications' see para 84 note 5 ante. As to the modifications which are permissible see para 123 ante.

3 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. For general provisions as to meetings see para 119 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

4 As to the supervisor see para 132 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 1.22(1) (r 1.22(1) substituted, r 1.22(2) repealed, and r 1.22(3)(b) amended, by SI 2002/2712). The amendments made to these provisions do not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), in which event it is instead provided that if the voluntary arrangement is approved, with or without modifications, by both the company and creditors' meetings, a resolution may be taken by the creditors, where two or more insolvency practitioners are appointed to act as supervisor, on the question whether acts to be done in connection with the arrangement may be done by any one of them, or must be done by both or all, and that such a resolution may be passed in anticipation of the approval of the voluntary arrangement by the company meeting if that meeting has not then been concluded: Insolvency Rules 1986, SI 1986/1925, r 1.22(1), (2) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

6 Ibid r 1.22(3)(a).

7 As to qualification to act as an insolvency practitioner and acting as such see para 8 et seq ante.

8 For the meaning of 'authorised person' see para 98 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 1.22(3)(b) (as amended: see note 5 supra). Confirmation that a person is an authorised person in relation to the company is not required in a case where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before

1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), since an authorised person could not in those circumstances be appointed: r 1.22(3)(b) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(3) PROCEDURE ON PROPOSAL WHERE THERE IS NO MORATORIUM/(iv) Consideration of the Proposal/B. DECISIONS OF MEETINGS; VOTING RIGHTS AND MAJORITIES/129. Report of meetings.

129. Report of meetings.

After the conclusion of the creditors' meeting or of the company meeting¹, the chairman of the meeting² must prepare a report of the meetings and report the result of the meetings to the court³. The report must:

- 195 (1) state whether the proposal for a voluntary arrangement was approved by the creditors of the company⁴ alone or by both the creditors and members of the company and in either case whether such approval was with any modifications⁵;
- 196 (2) set out the resolutions which were taken at each meeting, and the decisions on each one⁶;
- 197 (3) list the creditors and members of the company, with their respective values, who were present or represented at the meetings, and how they voted on each resolution⁷;
- 198 (4) state whether, in the opinion of the supervisor⁸, the European Regulation on Insolvency Proceedings⁹ applies to the voluntary arrangement and, if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings¹⁰; and
- 199 (5) include such further information, if any, as the chairman thinks it appropriate to make known to the court¹¹.

Immediately after reporting to the court, the chairman of each meeting must also give notice of its result to all those who were sent notice of the meeting¹².

1 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. For general provisions as to meetings see para 119 ante. For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

2 As to the chairman see para 121 ante.

3 Insolvency Act 1986 s 4(6); Insolvency Rules 1986, SI 1986/1925, r 1.24(1). A copy of the chairman's report must be filed in court within four days of the meetings being held, and the court must cause that copy to be endorsed with the date of filing: r 1.24(3). 'File in court' and 'file with the court' mean deliver to the court for filing: r 13.13(3) (amended by SI 2003/1730). For the meaning of 'the court' see para 4 ante. The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

4 As to the meaning of 'company' see para 71 note 1 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(a) (amended by SI 2002/2712). The amendment of these provisions does not apply where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), in which case the report is required simply to state whether the proposal was

approved or rejected (ie there is no requirement to specify by whom) and, if approved, with what (if any) modifications: Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(a) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the meaning of 'modifications' see para 84 note 5 ante. As to the meaning of 'member' see para 72 note 9 ante.

In the case of a proposed voluntary arrangement relating to a limited liability partnership, the report (of the single meeting held) must include, where modifications to the proposal were proposed at the meeting, the response to those proposed modifications made by the partnership: see the Insolvency Act 1986 s 4(6); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(b).

7 Ibid r 1.24(2)(c) (r 1.24(2)(c) amended, and r 1.24(2)(ca) added, by SI 2002/1307).

8 As to the appointment of the supervisor see para 132 post.

9 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings (see para 46 et seq ante).

10 Insolvency Rules 1986, SI 1986/1925, r 1.24(2)(ca) (as added: see note 7 supra).

11 Ibid r 1.24(2)(d).

12 Insolvency Act 1986 s 4(6); Insolvency Rules 1986, SI 1986/1925, r 1.24(4). If the voluntary arrangement has effect (ie under the Insolvency Act 1986 s 4A (as added) (see para 130 post)) (or, where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), has been approved by the meetings), whether or not in the form proposed, the supervisor must forthwith send a copy of the chairman's report to the registrar of companies: Insolvency Rules 1986, SI 1986/1925, r 1.24(5) (amended by SI 2002/2712); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the persons to be sent notice of the meetings see paras 115, 117-118 ante.

There is a prescribed form of a report by the chairman of the meeting to the registrar of companies required for these purposes (see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 1.1 (substituted by SI 2002/2712)). However, the only person to send a copy of the chairman's report to the registrar of companies is the supervisor.

In the case of a proposed voluntary arrangement relating to a limited liability partnership, notice of the result of the meeting must also be given to the partnership: see the Insolvency Act 1986 s 4(6); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

129 Report of meetings

NOTE 12--SI 1986/1925 Sch 4 Form 1.1 revoked: SI 2010/686.

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(v) Effect and Implementation of the Arrangement

130. Approval of arrangement.

A decision with respect to the approval of a proposed voluntary arrangement¹ taken at the meetings² summoned³ to consider that arrangement⁴ has effect if, in accordance with the Insolvency Rules 1986⁵, it has been taken by both the creditors' meeting and company meeting⁶. If, however, the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the court⁷ for an order that the decision of the company meeting is to have effect instead of the decision of the creditors' meeting⁸, and if such an order is made, the decision of the company meeting will have effect as if made by the creditors' meeting⁹. The court may also, on such an application, make such other order as it thinks fit¹⁰.

1 For the meaning of 'voluntary arrangement' see para 71 ante. As to the making of proposals see paras 72, 108 ante.

2 I.e. meetings of the creditors and company. As to the meaning of 'company' see para 71 note 1 ante.

3 As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. For general provisions as to meetings see para 119 ante. As to the meaning of 'director' see para 5 note 2 ante. For the meaning of 'the nominee' see para 71 ante.

4 I.e. a decision taken under the Insolvency Act 1986 s 4 (as amended) (see para 123 ante).

5 I.e. the Insolvency Rules 1986, SI 1986/1925 (as amended). As to the applicable rules see para 119 et seq ante.

6 Insolvency Act 1986 s 4A(1), (2)(a) (s 4A added by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 5). The addition of these provisions does not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3).

7 Insolvency Act 1986 s 4A(3) (as added: see note 6 supra). As to the meaning of 'member' see para 72 note 9 ante. For the meaning of 'the court' see para 4 ante.

8 Ibid s 4A(6)(a) (as added: see note 6 supra). Such an application may not be made until after the end of the period of 28 days beginning with the day on which the decision was taken by the creditors' meeting (s 4A(4)(a) (as so added)) or, where the decision of the company was taken on a later day, that day (s 4A(4)(b) (as so added)). In relation to a regulated company (see para 73 note 2 ante (definition applied by s 4A(5) (as so added))), the Financial Services Authority is entitled to be heard on any application: s 4A(5) (as so added). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

Where the court makes an order under s 4A(6) (as added), the member of the company who applied for it must serve sealed copies of it on the supervisor of the voluntary arrangement (see para 132 post) and the directors of the company: Insolvency Rules 1986, SI 1986/1925, r 1.22A(1), (2) (r 1.22A added by SI 2002/2712). The addition of these provisions does not apply where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI

2002/2712, r 3(2). Service on the directors may be effected by service of a single copy on the company at its registered office: Insolvency Rules 1986, SI 1986/1925, r 1.22A(3) (as so added). The directors or (as the case may be) the supervisor must forthwith after receiving a copy of the court's order give notice of it to all persons who were sent notice of the creditors' or company meetings or who, not having been sent such notice, are affected by the order (r 1.22A(4) (as so added)), and the person on whose application the order was made must, within seven days of the order, deliver an office copy to the registrar of companies (r 1.22A(5) (as so added)). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

9 Insolvency Act 1986 s 4A(2)(b) (as added: see note 6 supra). Section 4A(2)(b) (as added) does not apply in relation to a building society: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 8A (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; Building Societies Act 1986 Sch 15A Pt I amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2); and the Building Societies Act 1986 Sch 15A Pt II para 8A added by the Insolvency Act 2000 Sch 2 para 14(1), (3)).

10 Insolvency Act 1986 s 4A(6)(b) (as added: see note 6 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

130 Approval of arrangement

NOTE 8--SI 1986/1925 r 1.22A(5) amended: SI 2009/2472.

NOTE 9--Building Societies Act 1986 Pt I further amended: SI 2009/1941.

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131. Effect of approval.

Where a decision approving a voluntary arrangement¹ has effect², the arrangement takes effect as if made by the company³ at the creditors' meeting⁴. The arrangement binds every person who in accordance with the Insolvency Rules 1986⁵ was entitled to vote at that meeting (whether or not he was present or represented at it)⁶, or would have been so entitled if he had had notice of it⁷, as if he were a party to the voluntary arrangement⁸. An approved voluntary arrangement binds a creditor only qua creditor and does not affect any proprietary rights which the creditor may have⁹. Nor does an approved voluntary arrangement affect any third party's independent rights and obligations in respect of a debt which is included in the arrangement unless it is clear that this is the intention of the arrangement, in which case notice should be given to the third party of the proposed arrangement¹⁰. An approved voluntary arrangement can include future liabilities, such as rental obligations, of the debtor company¹¹.

If the company is being wound up or is in administration, the court¹² may by order stay all proceedings in the winding up or provide for the appointment of the administrator to cease to have effect¹³. The court may also, or as an alternative, give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the voluntary arrangement¹⁴.

1 For the meaning of 'voluntary arrangement' see para 71 ante.

2 Ie pursuant to the Insolvency Act 1986 s 4A (as added) (see para 130 ante).

3 As to the meaning of 'company' see para 71 note 1 ante.

4 Insolvency Act 1986 s 5(1), (2)(a) (s 5(1), (2)(b) substituted, s 5(2A) added, and s 5(2), (3)(b) amended, by the Insolvency Act 2000 ss 2(a), 15(1), Sch 2 paras 1, 6, Sch 5). The amendments made to these provisions do not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies: Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3). In such circumstances the provisions of the Insolvency Act 1986 s 5 (as amended) (see the text and notes 5-14 infra) have effect where each of the meetings summoned under s 3 approves the proposed voluntary arrangement either with the same modifications or without modifications, and the reference to the voluntary arrangement in s 5(2)(a) is accordingly read as a reference to the approved arrangement: s 5(1), (2)(a) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3). In the case of a voluntary arrangement relating to a limited liability partnership having effect under these circumstances, the provisions of the Insolvency Act 1986 s 5 (as originally enacted) have effect where the meeting summoned under s 3 approves the proposed voluntary arrangement either with modifications agreed to by the partnership or without modifications: see s 5(1) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. For general provisions as to meetings see para 119 ante. As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'modifications' see para 84 note 5 ante.

5 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

6 Insolvency Act 1986 s 5(2)(b)(i) (as substituted: see note 4 supra). As to voting and requisite majorities at meetings see paras 124-126 ante.

7 Ibid s 5(2)(b)(ii) (as substituted: see note 4 supra). If when the arrangement ceases to have effect, any amount payable to a person bound by virtue of s 5(2)(b)(ii) (as substituted) has not been paid and the arrangement did not come to an end prematurely, the company will at that time become liable to pay to that person the amount payable under the arrangement: s 5(2A) (as added: see note 4 supra). As to when a voluntary arrangement comes to an end prematurely see para 74 note 15 ante.

8 Ibid s 5(2)(b) (as substituted: see note 4 supra). Where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), the approved voluntary arrangement binds every person who had notice of, and was entitled to vote at, the creditors' meeting, whether or not he was present or represented at the meeting, as if he were a party to the voluntary arrangement: s 5(2)(b) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3). As to notification of the completion of the arrangement see para 139 post.

9 *Re Mohammed Naeem (a bankrupt) (No 18 of 1988)* [1990] 1 WLR 48; *Re a Debtor (No 13A-IO-95)*, *Re a Debtor (No 14A-IO-95)* [1996] 1 All ER 691, [1995] 1 WLR 1127; *Re a Debtor (Nos 31/32/33 of 1993)*, *Calor Gas Ltd v Piercy* [1994] 2 BCLC 321, [1994] BCC 69.

10 *RA Securities Ltd v Mercantile Credit Co Ltd* [1995] 3 All ER 581, [1994] 2 BCLC 721; *Mytre Investments Ltd v Reynolds* [1995] 3 All ER 588; *March Estates plc v Gunmark Ltd* [1996] 2 BCLC 1.

11 *Doorbar v Alltime Securities Ltd* [1995] 1 BCLC 316, sub nom *Re A Debtor (No 162 of 1993)*, *Doorbar v Alltime Securities Ltd* [1994] BCC 994 (affd [1996] 2 All ER 948, [1996] 1 WLR 456, CA); *Re Cancel Ltd* [1996] 1 All ER 37, [1996] 1 BCLC 100.

12 For the meaning of 'the court' see para 4 ante.

13 Insolvency Act 1986 s 5(3)(a) (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 11). If a special administration regime (see para 145 post) has effect, or a petition for an administration order has been presented before 15 September 2003, this provision is expressed as having effect if the company is being wound up or if an administration order is in force, and instead of the power to provide for the appointment of the administrator to cease to have effect the court has power to discharge the administration order: Insolvency Act 1986 s 5(3)(a) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

The court may not make an order under the Insolvency Act 1986 s 5(3)(a) (as amended) either: (1) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by s 4(6) (see para 129 ante) has been made to the court (s 5(4)(a)); or (2) at any time when an application under s 6 (as amended) (see para 135 et seq post) or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought (s 5(4)(b)). In the case of a voluntary arrangement relating to a limited liability partnership, only one report is referred to: see s 6(3) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

14 Insolvency Act 1986 s 5(3)(b) (as amended: see note 4 supra). Where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), the reference to the voluntary arrangement in s 5(3)(b) is a reference to the approved voluntary arrangement: s 5(3)(b) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

131 Effect of approval

NOTE 11--See *Re Cotswold Co Ltd* [2009] EWHC 1151 (Ch), [2009] 2 BCLC 371.

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132. Appointment of supervisor and transfer of assets.

Where a voluntary arrangement¹ has effect², the person who is for the time being carrying out in relation to the arrangement the functions conferred either on the nominee³ by virtue of the approval given at one or both of the meetings⁴, or on a person other than the nominee by virtue of any modifications⁵, will be known as the supervisor of the arrangement⁶, and the directors⁷ (or, where the company is in liquidation or is in administration, and a person other than the responsible insolvency practitioner⁸ is appointed as supervisor of the voluntary arrangement, the insolvency practitioner)⁹, must forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement¹⁰. Where the company¹¹ is in liquidation or is in administration, the supervisor must, on taking possession of the assets, discharge any balance due to the insolvency practitioner by way of remuneration or on account of fees, costs, charges and expenses properly incurred and payable¹², and any advances made in respect of the company, together with interest on such advances¹³. The supervisor must from time to time out of the realisation of assets discharge all guarantees properly given by the insolvency practitioner for the benefit of the company, and must pay all the insolvency practitioner's expenses¹⁴.

The supervisor has power to apply to the court for an order under the provisions relating to transactions defrauding creditors where the victim of the transaction is bound by a voluntary arrangement¹⁵.

Provision is also made for increasing the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, for replacing one or more of those persons¹⁶.

1 For the meaning of 'voluntary arrangement' see para 71 ante.

2 I.e. pursuant to the Insolvency Act 1986 s 4A (as added) (see para 130 ante): Insolvency Act 1986 s 7(1) (s 7(1), (5) amended, and s 7(2)(a) substituted, by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 9); Insolvency Rules 1986, SI 1986/1925, r 1.23(1) (amended by SI 2002/2712). The amendments made to the Insolvency Act 1986 s 7 and the Insolvency Rules 1986, SI 1986/1925, r 1.23(1) do not apply where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). In these circumstances the provisions of the Insolvency Act 1986 s 7 (as amended) have effect where a voluntary arrangement approved by each of the meetings summoned under s 3 (see note 4 infra) has taken effect, and the provisions of the Insolvency Rules 1986, SI 1986/1925, r 1.23 (as amended) have effect after the approval of the voluntary arrangement: Insolvency Act 1986 s 7(1) (as originally enacted); Insolvency Rules 1986, SI 1986/1925, r 1.23(1) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

3 As to the nominee see para 71 ante.

4 le the meetings summoned under the Insolvency Act 1986 s 3: s 7(2)(a) (as substituted: see note 2 supra). As to the summoning of meetings where voluntary arrangements are proposed by the directors see para 115 ante; as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is himself the nominee see para 117 ante; and as to the summoning of meetings where the liquidator or administrator proposes a voluntary arrangement in relation to which he is not himself the nominee see para 118 ante. For general provisions as to meetings see para 119 ante. As to the meaning of 'director' see para 5 note 2 ante.

5 le pursuant to *ibid* s 2(4) (as substituted) (see para 114 ante) or s 4(2) (see para 123 ante). As to the meaning of 'modifications' see para 84 note 5 ante.

6 *Ibid* s 7(1), (2) (as amended: see note 2 supra). Where the nominee for the voluntary arrangement (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), it is provided that the person who is for the time being carrying out in relation to the arrangement the functions conferred either on the nominee by virtue of approval, or on a person other than the nominee by virtue of any modifications, will be known as the supervisor of the arrangement: s 7(1), (2) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3). In the case of a voluntary arrangement relating to a limited liability partnership having effect under these circumstances, the provisions of the Insolvency Act 1986 s 7 have effect where the meeting summoned under s 3 approves the proposed voluntary arrangement: see s 7(1) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. See also paras 115, 117 ante. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

As to the functions of the supervisor see para 133 post; and as to the keeping of accounts and the making of reports see para 134 post.

7 Insolvency Rules 1986, SI 1986/1925, r 1.23(1)(a).

8 References in *ibid* r 1.23 (as amended) to the responsible insolvency practitioner include, where a company is being wound up by the court, the official receiver, whether or not in his capacity as liquidator; and any sums due to the official receiver take priority over those due to a liquidator: r 1.23(6).

9 *Ibid* r 1.23(1)(b) (r 1.23(1)(b), (2) amended by SI 2003/1730).

10 Insolvency Rules 1986, SI 1986/1925, r 1.23(1). Where a voluntary arrangement provides for property to be paid to or transferred or held for the benefit of the creditors bound by the arrangement, such property will be held by the supervisor on trust pursuant to the terms of the arrangement for those creditors: *Re NT Gallagher & Son Ltd* [2002] EWCA Civ 404, [2002] 3 All ER 474, [2002] 2 BCLC 133. The effect of the liquidation of the company on such a trust will depend on the provisions of the voluntary arrangement: if the arrangement provides for what is to happen on liquidation, effect must be given thereto, but if the arrangement does not so provide, the trust will continue notwithstanding the liquidation or failure of the arrangement and will take effect according to its terms: *Re NT Gallagher & Son Ltd* supra.

11 As to the meaning of 'company' see para 71 note 1 ante.

12 le under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

13 *Ibid* r 1.23(2) (as amended: see note 9 supra). Interest is payable at the rate of 8% per annum: r 1.23(2) (as so amended); Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2). As an alternative to discharging these balances, the supervisor may, before taking possession, give the insolvency practitioner a written undertaking to discharge any such balance out of the first realisation of assets: Insolvency Rules 1986, SI 1986/1925, r 1.23(3). The insolvency practitioner has a charge on the assets included in the voluntary arrangement in respect of any sums so due until they have been discharged, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of such realisations: r 1.23(4).

14 *Ibid* r 1.23(5).

15 Insolvency Act 1986 s 424(1)(b). As to transactions defrauding creditors see para 853 et seq post.

16 *Ibid* s 7(6). Whenever it is expedient to appoint a person to carry out the functions of the supervisor, and it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court, the court may make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy: s 7(5) (as amended: see note 2 supra). Where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), the court cannot in these circumstances by order appoint a person who is authorised to act as supervisor in relation to the voluntary

arrangement: s 7(5) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, arts 2, 3(1), (3).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

132 Appointment of supervisor and transfer of assets

NOTE 16--See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

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133. Functions of supervisor.

The supervisor¹ may apply to the court² for directions in relation to any particular matter arising under the voluntary arrangement³, and is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it⁴. If any of the company's⁵ creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court⁶, and the court may confirm, reverse or modify any act or decision of the supervisor⁷, give him directions⁸, or make such other order as it thinks fit⁹.

1 As to the appointment of the supervisor see para 132 ante.

2 For the meaning of 'the court' see para 4 ante. As to the mode of application and the procedure see para 1055 et seq post. As to petitions to wind up presented by the supervisor see para 450 post; and as to petitions for an administration order presented by the supervisor see para 148 post.

3 Insolvency Act 1986 s 7(4)(a). For the meaning of 'voluntary arrangement' see para 71 ante. The power to seek directions from the court includes a power to apply for directions as to whether the voluntary arrangement is dead or alive (*Re Arthur Rathbone Kitchens Ltd* [1997] 2 BCLC 280, [1998] BCC 450), but does not enable the court to modify the terms of the arrangement (*Re Alpa Lighting Ltd* [1997] BPIR 341).

4 Insolvency Act 1986 s 7(4)(b).

5 As to the meaning of 'company' see para 71 note 1 ante.

6 Insolvency Act 1986 s 7(3). As to the mode of application and the procedure see para 1055 et seq post.

7 Ibid s 7(3)(a).

8 Ibid s 7(3)(b).

9 Ibid s 7(3)(c). For the analogous provisions in relation to a liquidator see para 1038 post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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134. Keeping of accounts and making of reports.

Where the voluntary arrangement¹ authorises or requires the supervisor² either:

- 200 (1) to carry on the business of the company³ or trade on its behalf or in its name⁴;
- 201 (2) to realise assets of the company⁵; or
- 202 (3) otherwise to administer or dispose of any of its funds⁶,

he must keep accounts and records of his acts and dealings in and in connection with the arrangement, including in particular records of all receipts and payments of money⁷. He is also required to prepare an annual abstract⁸ of such receipts and payments, and to send copies of it, accompanied by his comments on the progress and efficacy of the arrangement, to the court⁹, the registrar of companies¹⁰, the company¹¹, all those of the company's creditors who are bound by the arrangement¹², the members of the company who are so bound¹³, and (if the company is not in liquidation) the company's auditors for the time being¹⁴, unless in any period of 12 months he has made no payments and had no receipts, in which case he must at the end of that period send a statement to that effect to all the persons specified above¹⁵; but if the supervisor is not authorised as described above, he is only required to send to the persons specified an annual report¹⁶ on the progress and efficacy of the voluntary arrangement¹⁷.

Provision is made for the production to the Secretary of State, on request, of records and accounts kept, and abstracts and reports prepared, by the supervisor¹⁸.

1 For the meaning of 'voluntary arrangement' see para 71 ante.

2 As to the appointment of the supervisor see para 132 ante.

3 As to the meaning of 'company' see para 71 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 1.26(1)(a). The provisions concerning the consideration of proposals for voluntary arrangements and the implementation and effect of such arrangements (ie rr 1.13-1.29 (as amended)) apply to all such proposals whether made by the directors of the company (unless a moratorium has been sought) or by a liquidator or administrator: see para 119 note 2 ante. As to the consideration of proposals and effect of arrangements during a moratorium see para 96 et seq ante.

5 Ibid r 1.26(1)(b).

6 Ibid r 1.26(1)(c).

7 Ibid r 1.26(1). As to the records to be kept by insolvency practitioners generally see para 42 et seq ante.

8 The abstract must be prepared not less often than once in every 12 months beginning with the date of the supervisor's appointment: ibid r 1.26(2). The abstract must relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which an abstract was prepared under r 1.26: r 1.26(3).

9 Ibid r 1.26(2)(a). For the meaning of 'the court' see para 4 ante.

10 Ibid r 1.26(2)(b). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed form of abstract to be sent to the registrar of companies see rr 1.26, 12.7, Sch 4 Form 1.5.

11 Ibid r 1.26(2)(c).

12 Ibid r 1.26(2)(d).

13 Ibid r 1.26(2)(e). As to the meaning of 'member' see para 72 note 9 ante. The court may, however, on application by the supervisor, dispense with the sending under this provision of abstracts or reports to members of the company, either altogether or on the basis that the availability of the abstract or report to members is to be advertised by the supervisor in a specified manner (r 1.26(5)(a)); and the court may vary the dates on which the obligation to send abstracts or reports arises (r 1.26(5)(b)).

14 Ibid r 1.26(2)(f). Copies of the abstract must be sent out within the two months following the end of the period to which the abstract relates: r 1.26(3).

15 Ibid r 1.26(2).

16 The report must be sent not less often than once in every 12 months beginning with the date of the supervisor's appointment: ibid r 1.26(4).

17 Ibid r 1.26(4).

18 The Secretary of State may at any time during the course of the voluntary arrangement or after its completion or termination require the supervisor to produce for inspection his records and accounts in respect of the arrangement and copies of abstracts and reports prepared in compliance with r 1.26: r 1.27(1) (amended by SI 2002/2712). If the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), the Secretary of State may require the production of these documents at any time during the course of the voluntary arrangement or after its completion: Insolvency Rules 1986, SI 1986/1925, r 1.27(1) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). The Secretary of State may require production either at the premises of the supervisor or elsewhere; and it is the duty of the supervisor to comply with any requirement imposed on him under the Insolvency Rules 1986, SI 1986/1925, r 1.27 (as amended): r 1.27(2). The Secretary of State may cause any accounts and records produced to him under r 1.27 (as amended) to be audited; and the supervisor must give to the Secretary of State such further information and assistance as he needs for the purposes of his audit: r 1.27(3). As to the Secretary of State see para 11 note 10 ante.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

134 Keeping of accounts and making of reports

TEXT AND NOTES--See SI 1986/1925 r 1.26A (supervisor's accounts and reports), r 1.55 (provision by nominee or supervisor of information about time spent on a proposal or voluntary arrangement), and r 1.56 (omission of information from statement of affairs) (added by SI 2010/686).

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(vi) Challenge of Decisions

135. Grounds for challenge.

An application to the court¹ may be made, by any of the specified persons², on one or both of the following grounds, namely: (1) that a voluntary arrangement³ which has effect⁴ unfairly prejudices the interests of a creditor, member⁵ or contributory⁶ of the company⁷; or (2) that there has been some material irregularity at or in relation to the creditors' meeting or the company meeting⁸. Unfair prejudice predicates unfairness inherent in the terms of the proposal itself and, in particular, prejudice resulting from discriminatory treatment of a creditor or a class of creditors; events occurring at or in relation to the meetings, false and misleading information in the proposal and shortcomings in the documentation required for a voluntary arrangement may constitute material irregularities at or in relation to the meetings⁹.

1 For the meaning of 'the court' see para 4 ante. As to the mode of application and the procedure see para 1055 et seq post.

2 See para 136 post.

3 For the meaning of 'voluntary arrangement' see para 71 ante.

4 Ie under the Insolvency Act 1986 s 4A (as added) (see para 130 ante): s 6(1)(a) (amended by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 7(1), (2)). The amendment of these provisions does not apply where the nominee (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), in which case these provisions apply in respect of a voluntary arrangement approved at the meetings summoned under the Insolvency Act 1986 s 3 (see paras 115, 117, 118 ante): s 6(1)(a) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

5 As to the meaning of 'member' see para 72 note 9 ante.

6 For the meaning of 'contributory' see para 703 post. In the Insolvency Act 1986 s 6 (as amended) as applied to a building society, 'contributory': (1) means every person liable to contribute to the assets of the society in the event of its being wound up; (2) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory; and (3) includes persons who are liable to pay or contribute to the payment of any debt or liability of the building society being wound up, any sum for the adjustment of rights of members among themselves, or the expenses of the winding up; it does not, however include persons liable to contribute by virtue of a declaration by the court under s 213 (imputed responsibility for fraudulent trading) (see para 911 post) or s 214 (wrongful trading) (see para 914 post): see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 9 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)).

7 Insolvency Act 1986 s 6(1)(a) (as amended: see note 4 supra).

8 Ibid s 6(1)(b). In the case of a voluntary arrangement relating to a limited liability partnership, the applicable ground under s 6(1)(b) is that there has been some material irregularity at or in relation to the meeting: see s 6(1)(b) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. The test of material irregularity for these purposes is not whether the administrator had been right but whether his judgment about the material to be placed before the creditors was, based on the material available

to him at the time, a judgment to which no reasonable insolvency practitioner could come: *Re Trident Fashions plc (in administration) (No 2)*, *Anderson v Kroll Ltd (No 2)* [2004] EWHC 293 (Ch), [2004] 2 BCLC 35.

9 *Re A Debtor (No 259 of 1990)* [1992] 1 All ER 641, [1992] 1 WLR 226; *Re a Debtor (No 222 of 1990)*, *ex p Bank of Ireland* [1992] BCLC 137; *Re a Debtor (No 162 of 1993)*, *Doorbar v Alltime Securities Ltd (No 2)* [1995] 2 BCLC 513, sub nom *Doorbar v Alltime Securities Ltd (No 2)* [1995] BCC 728 (affd [1996] 1 BCLC 487, [1996] BPIR 128, CA); *Peck v Craighead* [1995] 1 BCLC 337, sub nom *Re a Debtor (No 10 of 1992)*, *Peck v Craighead* [1995] BCC 525; *Re a Debtor (No 87 of 1993) (No 2)* [1996] 1 BCLC 63, [1996] BCC 80.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

135 Grounds for challenge

NOTE 6--Building Societies Act 1986 Sch 15A Pt I further amended: SI 2009/1941.

NOTE 8--See *Prudential Assurance Co Ltd v PRG Powerhouse Ltd* [2007] EWHC 1002 (Ch), [2008] 1 BCLC 289.

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136. Who may apply and when.

The persons who may apply to the court¹ to challenge a decision are: a person entitled² to vote at either the creditors' meeting or the company meeting³; a person who would have been entitled to vote at the creditors' meeting if he had had notice of it⁴; the nominee or any person who has replaced him⁵; and, if the company is being wound up or is in administration, the liquidator or administrator⁶. An application may not be made after the end of the period of 28 days beginning with the first day on which each of the reports of the results of the meetings of creditors and members⁷ has been made to the court⁸ or, in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place⁹ but, subject to that, an application by a person who would have been entitled to vote at the creditors' meeting if he had had notice of it on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely¹⁰.

1 Ie under the Insolvency Act 1986 s 6(1)-(3) (as amended): see the text and notes 2-10 *infra*; and para 135 *ante*. For the meaning of 'the court' see para 4 *ante*.

2 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see paras 124, 126 *ante*. A person who has no entitlement to vote at the meetings has no *locus standi* to make an application under the Insolvency Act 1986 s 6 (as amended): *Re Cranley Mansions Ltd* [1994] 1 WLR 1610.

3 Insolvency Act 1986 s 6(2)(a). As to the meetings summoned under s 3 see paras 115, 117-118 *ante*. In the case of a voluntary arrangement relating to a limited liability partnership, the right to apply to the court is granted to any member of the partnership and any person entitled to vote at the meeting: see s 6(2)(a) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 *post*. For the meaning of 'limited liability partnership' see para 71 note 3 *ante*.

4 Insolvency Act 1986 s 6(2)(aa) (s 6(2)(aa) added, and s 6(3) amended, by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 7(1), (3), (4)). The amendments made to the Insolvency Act 1986 s 6 do not apply where the nominee (see para 71 *ante*) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 *ante* applies: Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1)).

5 Insolvency Act 1986 s 6(2)(b). The provisions under which the nominee may be replaced for these purposes are s 2(4) (as substituted) (see para 114 *ante*) or s 4(2) (see para 123 *ante*).

6 Ibid s 6(2)(c) (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 12). If a special administration regime (see para 145 *post*) has effect, or a petition for an administration order has been presented before 15 September 2003, this provision is expressed as having effect if the company is being wound up or if an administration order is in force: Insolvency Act 1986 s 6(2)(c) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). In the case of a voluntary arrangement relating to a limited liability partnership, the liquidator or administrator are not permitted to apply to the court: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 *post*.

7 Ie the reports required by the Insolvency Act 1986 s 4(6): see para 129 *ante*. In the case of a voluntary arrangement relating to a limited liability partnership, there is only one report: see s 6(3) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 *post*.

8 Insolvency Act 1986 s 6(3)(a) (s 6(3) as amended: see note 4 *supra*).

9 Ibid s 6(3)(b) (s 6(3) as amended: see note 4 *supra*).

10 Ibid s 6(3) (as amended: see note 4 supra). As to when a voluntary arrangement comes to an end prematurely see para 74 note 15 ante.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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137. Powers of the court concerning challenges.

Where, on an application to challenge a decision¹, the court² is satisfied as to either of the specified grounds for making such an application³, it may do one or both of the following, namely:

- 203 (1) revoke or suspend any decision approving the voluntary arrangement⁴ which has effect⁵ or, where there has been some material irregularity at or in relation to either the creditors' meeting or the company meeting⁶, any decision taken by the meeting in question which has effect⁷;
- 204 (2) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, where there has been some material irregularity at or in relation to either of the meetings, a further company meeting or, as the case may be, creditors' meeting to reconsider the original proposal⁸.

Where, at any time after giving a direction for the summoning of meetings to consider a revised proposal⁹, the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court must revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect¹⁰. The court will not, however, summon further meetings if the results of them would be obvious¹¹.

In a case where the court, on such an application with respect to any meeting, gives a direction¹² or revokes or suspends an approval¹³, it may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect¹⁴.

Except in pursuance of these provisions¹⁵, a decision taken at a meeting of creditors or members¹⁶ is not invalidated by any irregularity at or in relation to the meeting¹⁷.

1 Ie under the Insolvency Act 1986 s 6(1)-(3) (as amended) (see paras 135-136 ante).

2 For the meaning of 'the court' see para 4 ante.

3 Ie those specified in the Insolvency Act 1986 s 6(1) (as amended) (see para 135 ante).

4 For the meaning of 'voluntary arrangement' see para 71 ante.

5 Ie under the Insolvency Act 1986 s 4A (as added) (see para 130 ante).

6 Ie where a challenge arises under *ibid* s 6(1)(b) (see para 135 ante).

7 *Ibid* s 6(4)(a) (s 6(4)(a), (5)-(7) amended by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 7(1), (5)-(8)). The amendments made to these provisions do not apply where the nominee (see para 71 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), in which event the court may revoke or suspend the approvals given by the meetings or, in a case falling with the Insolvency Act 1986 s 6(1)(b) (see para 135 ante), any approval given by the meeting in question: s 6(4)(a) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1)).

As to the procedure where an order of revocation or suspension is made see para 138 post. See also note 8 infra.

8 Insolvency Act 1986 s 6(4)(b). In the case of a voluntary arrangement relating to a limited liability partnership, if the court is satisfied as to either of the specified grounds for making an application, it may do one or both of the following, namely: (1) revoke or suspend the approval given by the meeting; or (2) give a direction to any person for the summoning of a further meeting to consider any revised proposal the limited liability partnership may make or, in a case where there has been some material irregularity at or in relation to the meeting, a further meeting to consider the original proposal: see s 6(4) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

9 Ie under the Insolvency Act 1986 s 6(4)(b) (see the text and note 8 supra).

10 Ibid s 6(5) (as amended: see note 7 supra). Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), it is instead provided that where at any time after giving a direction for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court must revoke the direction and revoke or suspend any approval given at the previous meetings: s 6(5) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1). In the case of a voluntary arrangement relating to a limited liability partnership, it is instead provided that where at any time after giving a direction for the summoning of a meeting to consider a revised proposal the court is satisfied that the limited liability partnership does not intend to submit a revised proposal, the court must revoke the direction and revoke or suspend any approval given at the previous meeting: see the Insolvency Act 1986 s 6(5) (as originally enacted); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1305 post.

11 *Re a Debtor (No 222 of 1990), ex p Bank of Ireland* [1992] BCLC 137.

12 Ie under the Insolvency Act 1986 s 6(4)(b) (see the text and note 8 supra).

13 Ie under ibid s 6(4)(a) (as amended) (see the text and notes 5-7 supra) or s 6(5) (as amended) (see the text and notes 9-10 supra).

14 Ibid s 6(6) (as amended: see note 7 supra). Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), it is instead provided that the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done since the meeting under any voluntary arrangement approved by the meeting: s 6(6) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

15 Ie the Insolvency Act 1986 s 6(1)-(6) (as amended): see the text and notes 1-14 supra; and paras 135-136 ante.

16 Ie the meetings summoned under ibid s 3: see paras 115, 117, 118 ante. As to the meaning of 'member' see para 72 note 9 ante.

17 Ibid s 6(7) (as amended: see note 7 supra). Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie if one of the circumstances set out in para 71 note 6 ante applies), it is instead provided that except in pursuance of s 6(1)-(6) (as originally enacted), an approval given at a meeting of creditors or members is not invalidated by any irregularity at or in relation to the meeting: s 6(7) (as originally enacted); Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002, SI 2002/2711, art 3(1).

UPDATE

71-144 Company Voluntary Arrangements

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(4) REVOCATION, SUSPENSION, COMPLETION AND TERMINATION OF ARRANGEMENTS

138. Procedure following revocation or suspension.

Where the court¹ makes an order of revocation or suspension of a voluntary arrangement², the person who applied for the order must serve sealed copies of it on the supervisor of the arrangement³, and the directors of the company⁴ or the administrator or liquidator, according to who made the proposal for the arrangement⁵. If the order includes a direction by the court for any further meetings to be summoned⁶, notice must also be given⁷ (by the person who applied for the order) to whoever is, in accordance with the direction, required to summon the meetings⁸.

The directors or, as the case may be, the administrator or liquidator must:

- 205 (1) forthwith after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' and company meetings or who, not having been sent that notice, appear to be affected by the order⁹; and
- 206 (2) within seven days of receiving a copy of the order, or within such longer period as the court may allow, give notice to the court whether it is intended to make a revised proposal to the company and its creditors, or to invite reconsideration of the original proposal¹⁰.

The person on whose application the order of revocation or suspension was made must, within seven days after the making of the order, deliver a copy of the order to the registrar of companies¹¹.

1 For the meaning of 'the court' see para 4 ante.

2 Ie under the Insolvency Act 1986 s 6 (as amended) (ie where no moratorium has been sought: see para 137 ante) or Sch A1 para 38 (as added) (ie where a moratorium has had effect: see para 107 ante). The provisions concerning the suspension, revocation, completion and termination of voluntary arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.25, 1.29 (as amended) (see the text and notes 3-11 infra; and para 139 post)) apply to all voluntary arrangements whether or not a moratorium has been sought or granted. For the meaning of 'voluntary arrangement' see para 71 ante. As to moratoriums (ie under the Insolvency Act 1986 s 1A, Sch A1 para 1 (as added)) see para 73 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, rr 1.25(1), (2)(a), 1.54(2) (rr 1.35-1.54 added by SI 2002/2712). The addition of these provisions does not apply where the nominee (see paras 71, 75 note 4 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). Hence these provisions will not apply in those circumstances if a moratorium is in force. As to the supervisor where there is a moratorium see para 105 et seq ante; and as to the supervisor otherwise see para 132 et seq ante.

4 As to the meaning of 'director' see para 5 note 2 ante. As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante. Service on the directors may be effected by service of a single copy of the order on the company at its registered office: Insolvency Rules 1986, SI 1986/1925, r 1.25(2).

5 Ibid rr 1.25(2)(b), 1.54(3)(d) (r 1.54 as added: see note 3 supra).

6 le under the Insolvency Act 1986 s 6(4)(b) (see para 137 ante) or Sch A1 para 38(4)(b) (as added) (see para 107 ante).

7 As to the mode of giving notice see para 1088 post.

8 Insolvency Rules 1986, SI 1986/1925, rr 1.25(3), 1.54(3)(e) (r 1.54 as added: see note 3 supra).

9 Ibid rr 1.25(4)(a), 1.54(3)(d) (r 1.54 as added: see note 3 supra). As to the summoning of meetings see paras 97, 115, 117-118 ante.

10 Ibid rr 1.25(4)(b), 1.54(3)(d) (r 1.54 as added: see note 3 supra).

11 Ibid r 1.25(5). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed form of notice to be given to the registrar of companies see rr 1.25, 12.7, Sch 4 Form 1.2 (substituted by SI 2002/2712).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

138 Procedure following revocation or suspension

NOTE 11--SI 1986/1925 Sch 4 Form 1.2 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(4) REVOCATION, SUSPENSION, COMPLETION AND TERMINATION OF ARRANGEMENTS/139. Completion of the arrangement.

139. Completion of the arrangement.

Not more than 28 days after the final completion or termination of the voluntary arrangement¹, the supervisor must send to all the creditors and members² of the company³ who are bound by it⁴ a notice that the voluntary arrangement has been fully implemented or, as the case may be, terminated⁵. With the notice there must be sent to each creditor and member a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining in relation to the implementation of the arrangement any departure from the proposals as they originally took effect or, in the case of termination of the arrangement, explaining the reasons why the arrangement has terminated⁶.

The supervisor must, within the 28-day period referred to above⁷, send to the registrar of companies⁸ and to the court a copy of the notice to creditors and members, together with a copy of the report⁹; and the supervisor must not vacate office until after such copies have been sent¹⁰.

1 For the meaning of 'voluntary arrangement' see para 71 ante. Where the nominee (see paras 71, 75 note 4 ante) has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies), the court may, on application by the supervisor, extend the 28 day period: see the Insolvency Rules 1986, SI 1986/1925, r 1.29(4) (as originally enacted); the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2); and note 5 infra. For the meaning of 'the court' see para 4 ante. As to the supervisor where there is a moratorium see para 105 et seq ante; and as to the supervisor otherwise see para 132 et seq ante.

2 As to the meaning of 'member' see para 72 note 9 ante.

3 As to the meaning of 'company' see paras 71 note 1, 73 note 2 ante.

4 As to those bound by the voluntary arrangements where there is a moratorium see para 104 ante; and as to those bound by the voluntary arrangements where there is not a moratorium see para 131 ante.

5 Insolvency Rules 1986, SI 1986/1925, rr 1.29(1), 1.54(2) (r 1.29 substituted, and rr 1.35-1.54 added, by SI 2002/2712). The amendments made to these provisions do not apply where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003: Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2). In those circumstances, the supervisor is not required to send notification of the termination of an arrangement, and the Insolvency Rules 1986, SI 1986/1925, r 1.29 is of no effect where a moratorium has been granted: see r 1.29(1) (as originally enacted); and the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

The provisions concerning the suspension, revocation, completion and termination of voluntary arrangements (ie the Insolvency Rules 1986, SI 1986/1925, rr 1.25, 1.29 (as amended)) apply to all voluntary arrangements whether or not a moratorium has been sought or granted. As to suspension and revocation see para 138 ante. As to moratoriums (ie under the Insolvency Act 1986 s 1A, Sch A1 para 1 (as added)) see para 73 et seq ante.

6 Insolvency Rules 1986, SI 1986/1925, r 1.29(2) (as substituted: see note 5 supra). In the report the supervisor must include a statement as to the amount paid, if any, to unsecured creditors by virtue of the application of the Insolvency Act 1986 s 176A (as added) (provisions relating to the share of the assets for unsecured creditors: see para 322 post): Insolvency Rules 1986, SI 1986/1925, r 1.29(4) (added by SI 2003/1730). As to the mode of application and the procedure see para 1055 et seq post.

Where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003, the explanation required is limited to an explanation of any difference in the actual implementation of the agreement as compared with the proposal as approved by the creditors' and company meetings: see the Insolvency Rules 1986, SI 1986/1925, r 1.29(2) (as originally enacted); and the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

7 See the text and note 1 *supra*.

8 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed form to be sent to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, rr 1.29, 12.7, Sch 4 Form 1.4.

9 See the report under *ibid* r 1.29(2) (see the text and note 6 *supra*).

10 *Ibid* r 1.29(3) (as substituted: see note 5 *supra*). The requirement that the supervisor must not vacate office until after copies have been sent does not apply where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003: see r 1.29(3) (as originally enacted); and the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 3(2).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

139 Completion of the arrangement

NOTE 8--SI 1986/1925 Sch 4 Form 1.4 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(5) MISCELLANEOUS PROVISIONS CONCERNING VOLUNTARY ARRANGEMENTS/140. Power to ensure continuation of essential supplies by utilities.

(5) MISCELLANEOUS PROVISIONS CONCERNING VOLUNTARY ARRANGEMENTS

140. Power to ensure continuation of essential supplies by utilities.

Where a moratorium is in force or a voluntary arrangement, approved by meetings of creditors and the company¹, has taken effect² and if a request is made by or with the concurrence of, as the case may be, the nominee or the supervisor³ for the giving after the effective date⁴ of:

- 207 (1) a supply of gas by a gas supplier⁵;
- 208 (2) a supply of electricity by an electricity supplier⁶;
- 209 (3) a supply of water by a water undertaker⁷; or
- 210 (4) a supply of communications services⁸ by a provider of a public electronic communications service⁹,

the supplier:

- 211 (a) may make it a condition of the giving of the supply that the supervisor personally guarantees the payment of any charges in respect of that supply¹⁰; but
- 212 (b) must not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid¹¹.

No such power to ensure the continuation of supplies by a trader, other than the utilities described above, exists, subject to the terms of the underlying supply contract¹².

1 le the meetings summoned under the Insolvency Act 1986 s 3: see paras 115, 117-118 ante.

2 The provisions of *ibid* s 233 (as amended) apply also where a company enters administration, an administrative receiver is appointed, the company goes into liquidation or a provisional liquidator is appointed: see s 233(1)(a), (b), (d), (e) (as amended); and paras 165, 399, 583, 962 post). In such cases, references to 'the supervisor' should be read as references to the administrator, the administrative receiver, the liquidator or the provisional liquidator of the company, as the case may be: s 233(1) (amended by the Insolvency Act 2000 s 1, Sch 1 paras 1, 8(1), (2)(c)). The Insolvency Act 1986 s 233 (as amended) is also modified in its application to insolvency proceedings involving limited liability partnerships: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

3 See note 2 *supra*.

4 For these purposes, 'the effective date' is either the date on which the moratorium came into force or the date on which the voluntary arrangement took effect: Insolvency Act 1986 s 233(4)(ba), (c) (s 233(4)(ba) added, and s 233(4)(c) amended, by the Insolvency Act 2000 Sch 1 paras 1, 8(1), (3)(a), (b)).

5 Insolvency Act 1986 s 233(3)(a) (substituted by the Gas Act 1995 s 16(1), Sch 4 para 14(1)).

6 Insolvency Act 1986 s 233(3)(b) (substituted by the Utilities Act 2000 s 108, Sch 6 para 47(1), (2)(a)).

- 7 Insolvency Act 1986 s 233(3)(c) (amended by the Water Act 1989 s 190(1), Sch 25 para 78(1)).
- 8 'Communications services' do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003: see TELECOMMUNICATIONS vol 97 (2010) PARA 60): Insolvency Act 1986 s 233(5)(d) (substituted by the Communications Act 2003 s 406(1), Sch 17 para 82(1), (2)(b)).
- 9 Insolvency Act 1986 s 233(3)(d) (substituted by the Communications Act 2003 Sch 17 para 82(1), (2)(a)).
- 10 Insolvency Act 1986 s 233(2)(a).
- 11 Ibid s 233(2)(b).
- 12 See *Leyland DAF Ltd v Automotive Products Ltd* [1994] 1 BCLC 245 at 250, [1993] BCC 389 at 392, CA, per Sir Donald Nicholls V-C (supply of components).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(5) MISCELLANEOUS PROVISIONS CONCERNING VOLUNTARY ARRANGEMENTS/141. Fees, costs, charges and expenses.

141. Fees, costs, charges and expenses.

The fees, costs, charges and expenses that may be incurred for any of the purposes of the voluntary arrangement are:

- 213 (1) any disbursements made by the nominee prior to the decision approving the arrangement taking effect¹, and any remuneration for his services as such agreed between himself and the company or, as the case may be, the administrator or liquidator²;
- 214 (2) any fees, costs, charges or expenses which are sanctioned by the terms of the arrangement, or which would be payable, or which correspond to those which would be payable, in an administration or winding up³.

¹ ie under the Insolvency Act 1986 s 4A (as added) (ie where no moratorium has been sought: see para 130 ante) or Sch A1 para 36 (as added) (ie where a moratorium has had effect: see para 82 ante). As to moratoriums (ie under the Insolvency Act 1986 s 1A, Sch A1 para 1 (as added)) see para 73 et seq ante.

² Insolvency Rules 1986, SI 1986/1925, rr 1.28(1)(a), 1.54(2), (3)(f) (r 1.28(1)(a) amended, rr 1.35-1.54 added, by SI 2002/2712). The amendments made to these provisions are subject to the transitional provisions noted at para 2045 note 6 ante, and do not apply where the nominee has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003: Insolvency (Amendment) (No 2) Rules, 2002, SI 2002/2712, r 3(2). In those circumstances the disbursements that may be incurred are any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and the company or, as the case may be, the administrator or liquidator.

³ Insolvency Rules 1986, SI 1986/1925, r 1.28(1)(b). As to the fees, costs, charges or expenses payable in an administration or winding up see paras 181 et seq, 805 et seq respectively post.

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(6) EC REGULATION/142. Conversion of voluntary arrangement into winding up.

(6) EC REGULATION

142. Conversion of voluntary arrangement into winding up.

Where a member state liquidator proposes to apply to the court for the conversion under the European Regulation on Insolvency Proceedings¹ of a voluntary arrangement into a winding up, an affidavit² must be prepared and sworn and filed in court in support of the application³. Such an application must be by originating application⁴. The application and the affidavit required must be served on the company and the supervisor⁵.

The affidavit must state:

- (1) that main proceedings have been opened in relation to the company in a member state other than the United Kingdom⁶;
- (2) the deponent's belief that the conversion of this voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings⁷;
- (3) the deponent's opinion as to whether the company ought to enter voluntary winding up or be wound up by the court⁸; and
- (4) all other matters that, in the opinion of the member state liquidator, would assist the court in deciding whether to make such an order and, if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable⁹.

Such an affidavit must be sworn by or on behalf of the member state liquidator¹⁰.

On hearing the application for conversion into winding up, the court may make such order as it thinks fit¹¹. If the court makes an order for conversion into winding up, the order contain all such consequential provisions as the court deems necessary or desirable¹². An order may, in particular, provide that the company be wound up as if a resolution for voluntary winding up¹³ were passed on the day on which the order is made¹⁴.

Where the court makes an order for conversion into winding up, any expenses properly incurred as expenses of the administration of the voluntary arrangement in question must be a first charge on the company's assets¹⁵.

1 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings, art 37. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

2 Ie complying with the Insolvency Rules 1986, SI 1986/1925, r 1.32 (as added).

3 Ibid r 1.31(1) (rr 1.31-1.33 added by SI 2002/1307).

4 Insolvency Rules 1986, SI 1986/1925, r 1.31(2) (as added: see note 3 supra).

5 Ibid r 1.31(3) (as added: see note 3 supra).

6 Ibid r 1.32(1)(a) (as added: see note 3 supra). For the meaning of 'United Kingdom' see para 12 note 2 ante.

7 Ibid r 1.32(1)(b) (as added: see note 3 supra).

- 8 Ibid r 1.32(1)(c) (as added: see note 3 supra).
- 9 Ibid r 1.32(1)(d) (as added: see note 3 supra).
- 10 Ibid r 1.32(2) (as added: see note 3 supra).
- 11 Ibid r 1.33(1) (as added: see note 3 supra).
- 12 Ibid r 1.33(2) (as added: see note 3 supra).
- 13 le under the Insolvency Act 1986 s 84 (as amended) (see para 939 post).
- 14 Insolvency Rules 1986, SI 1986/1925, r 1.33(3) (as added: see note 3 supra).
- 15 Ibid r 1.33(4) (as added: see note 3 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

142 Conversion of voluntary arrangement into winding up

TEXT AND NOTES 1-3--SI 1986/1925 r 1.31(1) substituted by r 1.31(1), (1A): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(6) EC REGULATION/143. Member state liquidator.

143. Member state liquidator.

Where a member state liquidator has been appointed in relation to the company and the supervisor is obliged to give notice to, or provide a copy of a document (including an order of the court), to the court, the registrar of companies or the official receiver, the supervisor must give notice or provide copies, as appropriate, to the member state liquidator¹. This obligation is without prejudice to the generality of the obligations imposed by the European Regulation on Insolvency Proceedings² in relation to the duty to co-operate and communicate information³.

1 Insolvency Rules 1986, SI 1986/1925, r 1.34(1) (r 1.34 added by SI 2002/1307).

2 I.e. EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings, art 31. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 1.34(2) (as added: see note 1 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/4. COMPANY VOLUNTARY ARRANGEMENTS/(7) PROSECUTION OF DELINQUENT OFFICERS/144. Prosecution of delinquent officers of company.

(7) PROSECUTION OF DELINQUENT OFFICERS

144. Prosecution of delinquent officers of company.

Where a moratorium has been obtained for a company¹ or the approval of a voluntary arrangement in relation to a company has taken effect², if it appears to the nominee or supervisor⁴ that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor must forthwith report the matter to the appropriate authority⁵ and provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents, being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question, as the authority requires⁶.

Where a report is made to the Secretary of State he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable under the Companies Act 1985⁷ to investigate a company's affairs⁸. For the purpose of such an investigation, any obligation imposed on a person by any provision of the Companies Act 1985 to produce documents or give information to, or otherwise to assist, inspectors appointed to investigate a company's affairs is to be regarded as an obligation to similarly assist the Secretary of State in his investigation⁹. An answer given by a person to a question put to him in exercise of the powers conferred by these provisions may be used in evidence against him¹⁰. However, in most criminal proceedings¹¹, no evidence relating to the answer may be adduced and no question relating to it may be asked, by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person¹².

Where a prosecuting authority institutes criminal proceedings following any report, the nominee or supervisor and every officer and agent of the company past and present, other than the defendant or defender, must give the authority all assistance in connection with the prosecution which he is reasonably able to give¹³. The court may, on the application of the prosecuting authority, direct any person mentioned above to comply with the requirement if he has failed to do so¹⁴.

1 Ie under the Insolvency Act 1986 s 1A, Sch A1 para 1 (as added)): see para 73 et seq ante.

2 Ie under ibid s 4A (as added) (ie where no moratorium has been sought: see para 130 ante) or Sch A1 para 36 (as added) (ie where a moratorium has had effect: see para 82 ante).

3 As to the nominee see paras 71, 75 note 4 ante.

4 As to the supervisor see paras 105 et seq, 132 et seq ante.

5 For these purposes, 'appropriate authority' means, in the case of a company registered in England and Wales, the Secretary of State and, in the case of a company registered in Scotland, the Lord Advocate: Insolvency Act 1986 s 7A(2) (s 7A added by the Insolvency Act 2000 s 2(a), Sch 2 paras 1, 5). The addition of these provisions does not apply where the nominee for the voluntary arrangement has agreed and commenced to act in connection with the proposed arrangement before 1 January 2003 (ie where one of the circumstances set out in para 71 note 6 ante applies): Insolvency Act 2000 (Commencement No 3 and Transitional Provisions)

Order 2002, SI 2002/2711, arts 2, 3(1), (3). For the meaning of 'voluntary arrangement' see para 71 ante. As to the Secretary of State see para 11 note 10 ante. In the case of a building society, the appropriate authority is the Financial Services Authority: see the Insolvency Act 1986 s 7A(2) (as so added) (modified by the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 9A(a) (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2); Building Societies Act 1986 Sch 15A Pt II para 9A added by the Insolvency Act 2000 Sch 2 para 14(1), (4); and amended by the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, Sch 3 paras 131, 210(e))). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

6 Insolvency Act 1986 s 7A(1), (2) (as added: see note 5 supra).

7 le under the Companies Act 1985 ss 431, 432 (as amended) (see COMPANIES vol 15 (2009) PARAS 1541-1542).

8 Insolvency Act 1986 s 7A(3) (as added: see note 5 supra). The provisions of s 7A(3)-(7) (as added) do not apply in the case of a building society: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 9A(b) (as added: see note 5 supra).

9 Insolvency Act 1986 s 7A(4) (as added: see note 5 supra). See note 8 supra.

10 Ibid s 7A(5) (as added: see note 5 supra). See note 8 supra.

11 le in criminal proceedings in which the person is charged with any offence other than an offence under the Perjury Act 1911 s 2 or s 5 or an offence under the Criminal Law (Consolidation) (Scotland) Act 1995 s 44(1), (2): Insolvency Act 1986 s 7A(7) (as added: see note 5 supra). See note 8 supra.

12 Ibid s 7A(6) (as added: see note 5 supra). See note 8 supra.

13 Ibid s 7A(8) (as added: see note 5 supra). For this purpose, 'agent' includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company; and 'prosecuting authority' means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (except in relation to building societies, when it means the Financial Services Authority): s 7A(8) (as so added); modified in relation to building societies by the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 9A(c) (as added and amended: see note 5 supra)).

14 Insolvency Act 1986 s 7A(9) (as added: see note 5 supra).

UPDATE

71-144 Company Voluntary Arrangements

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

144 Prosecution of delinquent officers of company

NOTE 5--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

NOTE 8--Insolvency Act 1986 s 7A(3) amended: SI 2009/1941.

NOTE 9--Insolvency Act 1986 s 7A(4) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(1) INTRODUCTION/145. Nature of administration: the Insolvency Act 1986 and the Enterprise Act 2002.

5. ADMINISTRATION

(1) INTRODUCTION

145. Nature of administration: the Insolvency Act 1986 and the Enterprise Act 2002.

Company administration is generally governed by a statutory scheme introduced by the Enterprise Act 2002¹. This scheme applies to all administrations commencing after 15 September 2003², apart from administrations operated under special administration regimes³. Where, however, a petition for an administration order has been presented prior to 15 September 2003, or where the administration is operated under a special administration regime, that is, where it relates to:

- 215 (1) a statutory water and sewerage undertaker⁴;
- 216 (2) a protected railway company⁵;
- 217 (3) a licensed air traffic services company⁶;
- 218 (4) a public-private partnership company⁷;
- 219 (5) a building society⁸; or
- 220 (6) a qualifying licensed water supplier⁹,

the administration will continue to be governed by the Insolvency Act 1986 as enacted prior to the introduction of the new scheme under the Enterprise Act 2002 ('the former administration provisions')¹⁰.

The former administration provisions also continue to apply in so far as is necessary to give effect to the statutory provisions governing the administration of insolvent partnerships¹¹, limited liability partnerships¹², and insurers¹³.

1 le the Insolvency Act 1986 Pt II (s 8, Sch B1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to this statutory scheme see para 212 et seq post.

2 le the date appointed for the coming into force of the Enterprise Act 2002 s 248, Schs 16, 17 (which introduce the new system: see the text and note 1 supra): see the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 2(1).

3 As to special administration regimes see the text and notes 4-9 infra.

4 Enterprise Act 2002 s 249(1)(a), (2). The statutory water and sewerage undertakers referred to in the text are those holding an appointment under the Water Industry Act 1991 Pt II Ch II (ss 6-17) (as amended): see WATER AND WATERWAYS vol 101 (2009) para 134 et seq. As to special administration orders in connection with such companies see ss 23-26, Sch 3 (as amended); and WATER AND WATERWAYS vol 100 (2009) PARA 173.

5 Enterprise Act 2002 s 249(1)(b), (2). For the meaning of 'protected railway company' see the Railways Act 1993 s 59(6)(a); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 187. As to the administration of protected railway companies (by means of railway administration orders) see ss 59-65, Sch 6 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 187 et seq. See also the Channel Tunnel Rail Link Act 1996 s 19.

6 Enterprise Act 2002 s 249(1)(c), (2). A licensed air traffic services company is a 'licence company' within the meaning of the Transport Act 2000 s 26 (see AIR LAW vol 2 (2008) PARA 157). As to the administration of

licence companies (by means of air traffic administration orders) see ss 26-33, Sch 1; and AIR LAW vol 2 (2008) PARA 158.

7 Enterprise Act 2002 s 249(1)(d), (2). For the meaning of 'public-private partnership company' see the Greater London Authority Act 1999 s 210; and LONDON GOVERNMENT. Provision for the administration of public-private partnership companies (by means of PPP administration orders) is made by ss 220-224, Sch 14.

8 Enterprise Act 2002 s 249(1)(e), (2). For the meaning of 'building society' for these purposes see the Building Societies Act 1986 s 119; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1856. As to the dissolution and winding up of building societies see ss 86-92 (as amended), Sch 15A (as added); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2066 et seq.

9 Enterprise Act 2002 s 249(1)(aa), (2) (s 249(1)(aa) prospectively added by the Water Act 2003 s 101(1), Sch 8 para 55(1), (3)). This provision is to come into force as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'qualifying licensed water supplier' see the Water Industry Act 1991 s 23(6) (prospectively added by the Water Act 2003 Sch 8 paras 2, 8(1), (6)). As to special administration orders in connection with such companies see the Water Industry Act 1991 ss 23-26, Sch 3 (as amended); and WATER AND WATERWAYS vol 100 (2009) PARA 173.

10 Enterprise Act 2002 s 249(1), (2) (s 249(1) prospectively amended: see note 9 supra); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(1), (2)(a).

Administrations commenced prior to 15 September 2003 or operated under special administration regimes are accordingly governed by the Insolvency Act 1986 Pt II (ss 8-27) (amended by the Criminal Justice Act 1988 s 62(2)(a); the Insolvency Act 1994 ss 1, 5(2), Sch 2; the Access to Justice Act 1999 s 90, Sch 13 para 133; the Insolvency Act 2000 ss 1, 9(1)-(3), 15(1), Sch 1 paras 1, 5, Sch 5; the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, arts 303, 304; the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240; and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 14; and prospectively amended by the Companies Act 1989 s 107, Sch 16 para 3(1), (2)) (and otherwise having effect as originally enacted), associated provisions of general application (ie the Insolvency Act 1986 ss 230-246, 430, Sch 10 and the Company Directors Disqualification Act 1986 s 7, all of which have effect without the amendments effected by the Enterprise Act 2002 ss 248(3), 249, 278(2), Sch 17 paras 9-40, 42, Sch 26), and the relevant provisions of the subordinate legislation (ie the Insolvency Rules 1986, SI 1986/1925 (as amended) and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, without the amendments effected by the Insolvency (Amendment) Rules 2003, SI 2003/1730, or the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Amendment) Order 2003, SI 2003/2134, or the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353).

As to administrations under the former administration provisions see paras 146-211 post.

The effect of the continuance of the Insolvency Act 1986 Pt II as enacted prior to the amendments effected by the Enterprise Act 2002 in relation to special administration regimes may be modified, in respect of a particular class of company or society, either by order of the Treasury (in the case of building societies) or of the Secretary of State (in other cases): s 249(3). Such an order may make consequential amendment of an enactment (s 249(4)), must be made by statutory instrument (s 249(5)(a)), and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament (s 249(5)(b)). An amendment of the Insolvency Act 1986 made by the Enterprise Act 2002 is without prejudice to any power conferred by the Companies Act 1989 Pt VII (ss 154-191) (as amended): Enterprise Act 2002 s 249(6). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. As to the Secretary of State see para 11 note 10 ante.

11 Ie the Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 (as amended) (see para 1192 et seq post).

12 Ie the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5 (see para 1306 post).

13 Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3(3). The statutory provisions governing the administration of insurers is the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 492). As to administration of insurers see also para 213 note 10 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

145 Nature of administration: the Insolvency Act 1986 and the Enterprise Act 2002

TEXT AND NOTES--As to provision for administration in relation to banks see the Banking Act 2009 Pt 3 (ss 136-168); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791C.

NOTE 5--Channel Tunnel Rail Link Act 1996 s 19 amended: Railways Act 2005 Sch 13 Pt 1.

NOTE 10--SI 2004/383 amended: SI 2005/1998, SI 2007/108, SI 2007/851.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5.
ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(i)
Power to make Administration Orders/146. Administration order.

(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS

(i) Power to make Administration Orders

146. Administration order.

An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company are to be managed by a person ('the administrator') appointed for the purpose by the court¹.

¹ Insolvency Act 1986 s 8(2). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 8 (as amended) is modified in its application to the conduct of the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 10 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)).

For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. For the prescribed form of an administration order see the Insolvency Rules 1986, SI 1986/1925, rr 2.9, 12.7, Sch 4 Form 2.4 (as originally enacted). See para 145 note 10 ante. In the provisions of the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended), as they apply for these purposes (see para 145 ante) and except in so far as the context otherwise requires, 'insolvency', in relation to a company, includes the making of an administration order: s 247(1). In the Insolvency Act 1986 Pt II (as amended), a reference to a company includes a reference to a company in relation to which an administration order may be made by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 3 (jurisdiction): Insolvency Act 1986 s 8(7) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 5). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. Under the Insolvency Act 1986 s 8(7) (as added), the jurisdiction to make an administration order extends to a company incorporated by royal charter: *Re Salvage Association* [2003] EWHC 1028 (Ch), [2003] 3 All ER 246, [2004] 1 WLR 174. See also *Re Daisytek-ISA Ltd* [2003] BCC 562, where the court made administration orders in respect of German companies and a French company where it was shown that the companies' centre of main interests was the head office of the English holding company; *Re BRAC Rent-a-Car International Inc* [2003] EWHC 128 (Ch), [2003] 2 All ER 201, [2003] 1 WLR 1421, where an administration order was made in respect of a company incorporated outside the European Union where its centre of main interests was within England.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

146 Administration order

NOTE 1--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(i) Power to make Administration Orders/147. Power of court to make an administration order.

147. Power of court to make an administration order.

The court¹ may make an administration order² in relation to a company³, if it is satisfied that the company is or is likely to become unable to pay its debts⁴, and it considers that the making of such an order would be likely to achieve one or more of the following purposes⁵:

- 221 (1) the survival of the company, and the whole or any part of its undertaking, as a going concern⁶;
- 222 (2) the approval of a voluntary arrangement⁷;
- 223 (3) the sanctioning⁸ of a compromise or arrangement between the company and its creditors and members⁹;
- 224 (4) a more advantageous realisation of the company's assets than would be effected on a winding up¹⁰.

The order must specify the purpose or purposes for which it is made¹¹.

An administration order may not be made in relation to a company after it has gone into liquidation¹² nor in relation to certain insurance companies¹³, but an order may be made in respect of former authorised institutions¹⁴ which are companies within the meaning of the Companies Act 1985¹⁵ or in respect of companies which are subject to special administration regimes¹⁶. A foreign company may also be the subject¹⁷ of an administration order¹⁸.

1 For the meaning of 'the court' see para 4 ante.

2 For the meaning of 'administration order' see para 146 ante. A court in the United Kingdom may not in general make an administration order in relation to an EEA insurer (as defined in the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 2(1) or any of its branches or in relation to an EEA credit institution (as defined in the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 2(1) or any of its branches: see the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 4(1)(c), (4); and the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 3(1)(c), (4). Those regulations modify the law of insolvency in connection with insurers and credit institutions pursuant to EC Council Directive 2001/17 (OJ L110, 20.4.2001, p 28) on the reorganisation and winding up of insurance undertakings and EC Council Directive 2001/24 (OJ L125, 5.5.2001, p 15) on the reorganisation and winding up of credit institutions.

3 As to the meaning of 'company' for these purposes see paras 3, 146 note 1 ante.

4 Insolvency Act 1986 s 8(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 8 (as amended) is modified in its application to the conduct of the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 10 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)).

For the meaning of the expression 'inability to pay its debts' see the Insolvency Act 1986 s 123; and para 446 post. For the purposes of an administration petition presented by the Financial Services Authority alone or together with any other party, and for the purposes of an administration petition presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see the text and notes 14-15 infra), an authorised deposit taker who defaults in an obligation to pay any sum due and payable in respect of a relevant deposit is deemed to be unable to pay its debts for these purposes: Insolvency Act 1986 s 8(1A) (s 8(1A), (1B), (5), (6) added, and s 8(4) substituted, by the Financial Services and Markets Act 2000

(Consequential Amendments and Repeals) Order 2001, SI 2001/3649, arts 303, 304); Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 1 (substituted by SI 2001/3649). 'Authorised deposit taker' means a person who has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) to accept deposits, but excludes a person who has such permission only for the purpose of carrying on another regulated activity in accordance with that permission; and 'relevant deposit' must be read with s 22, Sch 2, and any relevant order under s 22 (although any restriction on the meaning of 'deposit' which arises from the identity of the person making it is to be disregarded): Insolvency Act 1986 s 8(1B) (as so added); Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 1 (as so substituted); and see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 84, 85, 348 et seq. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

A petitioner has to establish that insolvency of the company is more likely than not and it is not sufficient for the petitioner to prove that there was a 'real prospect' of insolvency: *Re Colt Telecom Group plc* [2002] EWHC 2815 (Ch), [2002] All ER (D) 347 (Dec).

5 Insolvency Act 1986 s 8(1)(b).

6 Ibid s 8(3)(a). See *Re Olympia & York Canary Wharf Holdings (No 3)* [1994] 1 BCLC 702.

7 Insolvency Act 1986 s 8(3)(b). As to voluntary arrangements and their approval see the Insolvency Act 1986 Pt I (ss 1-7B) (as amended); and para 71 et seq ante.

8 Ie under the Companies Act 1985 s 425 (as amended): see COMPANIES vol 15 (2009) PARA 1425 et seq.

9 Insolvency Act 1986 s 8(3)(c). As to the powers of an administrator to make distributions to creditors see para 163 post.

10 Ibid s 8(3)(d).

11 Ibid s 8(3). The court must be satisfied that there is a real prospect that the purpose or, if more than one, each of the purposes in question, may be achieved: *Re Harris Simons Construction Ltd* [1989] 1 WLR 368, [1989] BCLC 202; *Re Primlaks (UK) Ltd* [1989] BCLC 734, 5 BCC 710; *Re SCL Building Services Ltd* [1990] BCLC 98, 5 BCC 746; *Re Rowbotham Baxter Ltd* [1990] BCLC 397, [1990] BCC 113; *Re Chelmsford City Football Club (1980) Ltd* [1991] BCC 133; *Re Structures and Computers Ltd* [1998] 1 BCLC 292, [1998] BCC 348; *Re Lomax Leisure Ltd* [1999] 2 BCLC 126 at 140 per Neuberger J; *Re CE King Ltd* [2000] 2 BCLC 297 at 308 per Neuberger J. If in the course of the administration it becomes apparent that further purposes are likely to be achieved, an application may be made under the Insolvency Act 1986 s 18(1) (see para 162 post) to vary the order by the addition of a further specified purpose or purposes. Even if satisfied that there is a real prospect that one or more of the specified purposes will be achieved, the court has a discretion whether or not to make an administration order and, in exercising such discretion, the court will examine the degree of likelihood that the specified purpose or purposes will be achieved: *Re Harris Simons Construction Ltd* supra; *Re Primlaks (UK) Ltd* supra. As to the court's discretion to make an administration order see further para 154 post.

12 Insolvency Act 1986 s 8(4) (as substituted: see note 4 supra). For the meaning of 'go into liquidation' see para 9 note 3 ante. It seems that, even where a permanent stay of a winding up is granted (see para 903 post), a company will still be deemed to have gone into liquidation within the meaning of the Insolvency Act 1986 s 8(4) (as substituted): *Re SN Group plc* [1994] 1 BCLC 319, [1993] BCC 808. The Insolvency Act 1986 s 8(4) (as substituted) does not apply in the case of an administration order relating to a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post.

13 Insolvency Act 1986 s 8(5) (s 8(5) as added (see note 4 supra); s 8(5)(a) substituted, and s 8(5)(b) amended, by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 14). An administration order may not be made against a company if: (1) it effects or carries out contracts of insurance but is not: (a) exempt from the general prohibition (within the meaning of the Financial Services and Markets Act 2000 s 19: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 80) in relation to carrying out contracts of insurance; or (b) an authorised deposit taker (see note 4 supra) effecting or carrying out contracts of insurance in the course of banking business (Insolvency Act 1986 s 8(5)(a) (as so added and substituted)); or (2) other than for the purposes of an administration petition presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended), it continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987 but is not an authorised deposit taker (Insolvency Act 1986 s 8(5)(b) (as so added and amended)); Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 2 (amended by SI 2002/1555)). The Insolvency Act 1986 s 8(5)(a) (as added and substituted) is to be read with the Financial Services and Markets Act 2000 s 22, Sch 2, and any relevant order under s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84, 85): Insolvency Act 1986 s 8(6) (as added: see note 4 supra). The Insolvency Act 1986 s 8(5)(a) (as added and substituted) does not preclude the making of an administration order in relation to an insurer: see the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3 (as originally enacted). See para 145 note 10 ante.

The Insolvency Act 1986 s 8(5), (6) (as added and amended) do not apply in the case of an administration order relating to a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3 (amended by SI 2004/355); and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

14 For these purposes, 'former authorised institution' means a company which continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987 and is not an authorised person within the meaning given by the Financial Services and Markets Act 2000 s 31 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 314): Banks (Administration Proceedings) Order 1989, SI 1989/1276, art 1A (added by SI 2001/3649).

15 Banks (Administration Proceedings) Order 1989, SI 1989/1276, art 2 (amended by SI 2001/3649; SI 2002/1555). For the meaning of 'company' for these purposes see the Companies Act 1985 s 735; and COMPANIES vol 14 (2009) PARAS 1, 24.

16 As to the companies which may be subject to special administration regimes see para 145 ante.

17 Ie by virtue of the Insolvency Act 1986 s 426 (as amended): see para 1029 post.

18 See *Re Dallhold Estates (UK) Pty Ltd* [1992] BCLC 621, [1992] BCC 394. In the absence of a request under the Insolvency Act 1986 s 426(4) (see para 1029 post), and in a case not falling within EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the EC Regulation') (see para 46 et seq ante), it is doubtful whether the court has jurisdiction to make an administration order in respect of a company incorporated outside the United Kingdom: cf *Felixstowe Dock & Rly Co v United States Lines Inc* [1989] QB 360 at 376, [1988] 2 All ER 77 at 91 per Hirst J; *Re International Bulk Commodities Ltd* [1993] Ch 77, [1993] 1 All ER 361; *Re Devon and Somerset Farmers Ltd* [1994] Ch 57, [1994] 1 All ER 717.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

147 Power of court to make an administration order

NOTES 4, 14, 15--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

NOTE 4--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

TEXT AND NOTES 8, 9--1986 Act s 8(3)(c) (as originally enacted) substituted to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/148. Petition for administration order.

(ii) Petition and Procedure on Petition; Effect of Administration Orders

148. Petition for administration order.

An application to the court¹ for an administration order² must be by petition presented either by the company or the directors³, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by a justices' chief executive⁴ or by all or any or those parties, together or separately⁵.

If presented by the company or by the directors, the petition must state the name of the company and its address for service, which, in the absence of special reasons to the contrary, is that of the company's registered office⁶. If presented by a single creditor, the petition must state his name and address for service⁷. If the petition is presented by the directors, it must state that it is so presented⁸; but from and after presentation it is to be treated for all purposes as the petition of the company⁹. A petition may be presented by the company even if there is no prospect of the shareholders deriving any benefit from the making of an administration order¹⁰. If the petition is presented by two or more creditors, it must state that it is so presented, naming them; but from and after presentation it is to be treated for all purposes as the petition of one only of them, named in the petition as petitioning on behalf of himself and other creditors; and an address for service for that one must be specified¹¹.

The petition must specify the name and address of the person proposed to be appointed as administrator; and it must be stated that, to the best of the petitioner's knowledge and belief, such person is qualified to act as an insolvency practitioner in relation to the company¹².

1 For the meaning of 'the court' see para 4 ante.

2 For the meaning of 'administration order' see para 146 ante.

3 A petition by the directors must be presented by all of them acting unanimously when there has been no formal board resolution: *Re Instrumentation Electrical Services Ltd* [1988] BCLC 550, 4 BCC 301. If the board of directors resolves to present a petition for an administration order, any director has authority to present the petition on behalf of all of them; all of the company's directors, including those who voted against the resolution, are bound to take such steps as may be necessary to give effect to the board resolution: *Re Equiticorp International plc* [1989] 1 WLR 1010, [1989] BCLC 597. A petition may be presented by the directors even if the company is in provisional liquidation: *Re Gosscott (Groundworks) Ltd* [1988] BCLC 363 at 366, 4 BCC 372 at 374 per Mervyn Davies J.

Where an administration order relating to a limited liability partnership is applied for, the Insolvency Act 1986 s 9(1) (as amended) does not confer power on directors to present a petition: see s 9(1) (as amended: see note 5 infra); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 In exercise of the power conferred by the Magistrates' Courts Act 1980 s 87A (as added) (enforcement of fines imposed on companies): see MAGISTRATES vol 29(2) (Reissue) para 869.

5 Insolvency Act 1986 s 9(1) (amended by the Criminal Justice Act 1988 s 62(2)(a); and the Access to Justice Act 1999 s 90, Sch 13 para 133). The provisions of the Insolvency Act 1986 Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. The Financial Services Authority is also empowered to present an administration

petition pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see para 147 ante) (see Schedule para 3 (amended by SI 1998/1129)) or to the Financial Services and Markets Act 2000 s 359 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 491). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

For the prescribed form of petition for an administration order see the Insolvency Rules 1986, SI 1986/1925, rr 2.1, 12.7, Sch 4 Form 2.1 (as originally enacted). See para 145 note 10 ante. As to the mode of presenting the petition see para 152 post. A petition for an administration order may also be presented by the supervisor of a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 132 ante. See also para 150 text to note 7 post.

Section 9(1) (as amended) is modified in its application to the conduct of the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt I (as amended), Pt II paras 6, 11(1) (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)); and para 145 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.4(1) (as originally enacted).

7 Ibid r 2.4(2) (as originally enacted).

8 le under the Insolvency Act 1986 s 9 (as amended): see the text and notes 1-5 supra; and paras 153-154 post.

9 Insolvency Rules 1986, SI 1986/1925, r 2.4(3) (as originally enacted).

10 *Re Land and Property Trust Co plc* [1991] BCLC 845, [1991] BCC 446.

11 Insolvency Rules 1986, SI 1986/1925, r 2.4(4) (as originally enacted).

12 Ibid r 2.4(5) (as originally enacted). As to insolvency practitioners and their qualification see para 8 et seq ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

148 Petition for administration order

NOTE 5--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107. Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/149. Effect of presentation of petition.

149. Effect of presentation of petition.

During the period beginning with the presentation of a petition¹ for an administration order² and ending with the making of such an order or the dismissal of the petition³:

- 225 (1) no resolution may be passed⁴ or order made for the winding up of the company⁵;
- 226 (2) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose⁶;
- 227 (3) no steps may be taken to enforce any security⁷ over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement⁸, conditional sale agreement⁹, chattel leasing agreement¹⁰ or retention of title agreement¹¹, except with the leave of the court and subject to such terms as the court may impose¹²; and
- 228 (4) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as the court may impose¹³.

Nothing in these provisions requires the leave of the court:

- 229 (a) for the presentation of a petition for the winding up of the company¹⁴;
- 230 (b) for the appointment of an administrative receiver of the company¹⁵; or
- 231 (c) for the carrying out by such a receiver, whenever appointed, of any of his functions¹⁶.

Where a petition for an administration order is presented at a time when there is an administrative receiver of the company, and the person by or on whose behalf the receiver was appointed has not consented to the making of the order, the period mentioned above is deemed not to begin unless and until that person so consents¹⁷.

1 As to the mode of presenting a petition see para 152 post.

2 See para 146 ante.

3 See para 154 post.

4 As to resolutions for the winding up of a company see para 943 et seq post.

5 Insolvency Act 1986 s 10(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. See further para 157 note 8 post. Where an administration order relating to a limited liability partnership is applied for, s 10(1)(a) provides that no determination may be made or order made for the winding up of the

limited liability partnership: see s 10(1)(a); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

6 Insolvency Act 1986 s 10(1)(aa) (added by the Insolvency Act 2000 s 9(1), (2)).

7 For the meaning of 'security' see para 109 note 10 ante. A right to forfeit a lease for non-payment of rent or breach of covenant does not constitute security over a company's property for these purposes: see *Re Lomax Leisure Ltd* [2000] Ch 502, [1999] 3 All ER 22.

8 'Hire-purchase agreement' has the same meaning as in the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) para 95): Insolvency Act 1986 s 436.

9 'Conditional sale agreement' has the same meaning as in the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) para 93): Insolvency Act 1986 s 436.

10 As to chattel leasing agreements see PERSONAL PROPERTY vol 35 (Reissue) para 1228.

11 As to retention of title agreements see COMPANIES vol 15 (2009) PARA 1285.

12 Insolvency Act 1986 s 10(1)(b), (4). See further para 157 note 13 post.

13 Ibid s 10(1)(c). See further para 157 note 14 post.

14 Ibid s 10(2)(a). As to petitions to wind up a company see para 450 et seq post. The leave of the court is, however, required to take any further steps in connection with a winding-up petition after it has been presented and in particular to advertise the winding-up petition: *Re a Company (No 001992 of 1988)* [1989] BCLC 9.

15 Insolvency Act 1986 s 10(2)(b). As to administrative receivers and their appointment see para 380 et seq post. Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before 29 December 1986 (see para 2 ante), the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company: s 437, Sch 11 para 1(1).

The provisions of s 10(2)(b), (c), (3) do not apply in relation to the conduct of the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt II paras 6, 12 (Sch 15A as added and amended); and para 145 ante.

16 Insolvency Act 1986 s 10(2)(c).

17 Ibid s 10(3). As to the powers of the court to make an administration order where an administrative receiver has been appointed see para 154 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

149 Effect of presentation of petition

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/150. Affidavit to support petition.

150. Affidavit to support petition.

Where it is proposed to apply to the court by petition¹ for an administration order to be made in relation to a company, an affidavit must be prepared and sworn, with a view to its being filed in court² in support of the petition³. If the petition is to be presented by the company or by the directors, the affidavit must be made by one of the directors, or the secretary of the company, stating that he makes it on behalf of the company or, as the case may be, on behalf of the directors⁴. If the petition is to be presented by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not himself one of their number; and in any case there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates⁵. If the petition is to be presented by the supervisor of a voluntary arrangement⁶, it is to be treated as if it were a petition by the company⁷.

The affidavit must state:

- 232 (1) the deponent's belief that the company is, or is likely to become, unable to pay its debts⁸ and the grounds of that belief⁹; and
- 233 (2) which of the specified purposes¹⁰ is expected to be achieved by the making of an administration order¹¹.

In the affidavit there must be provided a statement of the company's financial position, specifying, to the best of the deponent's knowledge and belief, assets and liabilities, including contingent and prospective liabilities¹², and must give frank disclosure of the position¹³. Details must be given of any security¹⁴ known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver; and, if an administrative receiver has been appointed, that fact must be stated¹⁵. If any petition has been presented for the winding up of the company, details of it must be given in the affidavit, so far as within the immediate knowledge of the deponent¹⁶. If there are other matters which, in the opinion of those intending to present the petition for an administration order, will assist the court in deciding whether to make such an order, those matters, so far as lying within the knowledge or belief of the deponent, must also be stated¹⁷. The usual duty of full and frank disclosure is owed when an application for an administration order is made without notice¹⁸. If an independent report¹⁹ has been prepared for the company, that fact must be stated; if not, an explanation must be provided why not²⁰.

There must be exhibited to the affidavit in support of the petition:

- 234 (a) a copy of the petition²¹;
- 235 (b) a written consent²² by the proposed administrator to accept appointment, if an administration order is made²³; and
- 236 (c) if an independent report has been prepared, a copy of it²⁴.

1 See para 148 ante.

2 For the meaning of 'file in court' see para 129 note 3 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.1(1) (as originally enacted). See para 145 note 10 ante. As to the quality of the evidence which the court will require see para 147 note 11 ante.

4 Ibid r 2.1(2) (as originally enacted).

5 Ibid r 2.1(3) (as originally enacted).

6 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.1(4) (as originally enacted).

8 See para 147 note 4 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 2.3(1)(a) (as originally enacted).

10 Ie the purposes specified in the Insolvency Act 1986 s 8(3) (as originally enacted): see para 147 ante.

11 Insolvency Rules 1986, SI 1986/1925, r 2.3(1)(b) (as originally enacted).

12 Ibid r 2.3(2) (as originally enacted).

13 See *Re West Park Golf and Country Club* [1997] 1 BCLC 20.

14 For the meaning of 'security' see para 109 note 10 ante.

15 Insolvency Rules 1986, SI 1986/1925, r 2.3(3) (as originally enacted). As to administrative receivers see para 380 et seq post; and as to the right to appoint an administrative receiver upon presentation of a petition for an administration order see para 149 note 15 ante.

16 Ibid r 2.3(4) (as originally enacted).

17 Ibid r 2.3(5) (as originally enacted).

18 *Cornhill Insurance plc v Cornhill Financial Services Ltd* [1993] BCLC 914 at 951, [1992] BCC 818 at 852, CA, per His Honour Judge Micklem; *Astor Chemicals Ltd v Synthetic Technology Ltd* [1990] BCLC 1, [1990] BCC 97; *Re Sharps of Truro Ltd* [1990] BCC 94. See also *Re West Park Golf and Country Club* [1997] 1 BCLC 20.

19 Ie an independent report prepared under the Insolvency Rules 1986, SI 1986/1925, r 2.2 (as originally enacted): see para 151 post. As to the court's jurisdiction to restrict the right of inspection to an independent report on a company's affairs, and guidance as to the preparation of any such report containing sensitive information see *Practice Statement* [2002] 3 All ER 95, [2002] 1 WLR 1358.

20 Insolvency Rules 1986, SI 1986/1925, r 2.3(6) (as originally enacted).

21 Ibid r 2.4(6)(a) (as originally enacted).

22 For the prescribed form of written consent see ibid rr 2.4, 12.7, Sch 4 Form 2.2 (as originally enacted).

23 Ibid r 2.4(6)(b) (as originally enacted).

24 Ibid r 2.4(6)(c) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/151. Independent report on company's affairs.

151. Independent report on company's affairs.

There may be prepared, with a view to its being exhibited to the affidavit in support of the petition¹, a report by an independent person to the effect that the appointment of an administrator for the company is expedient². The report may be by the person proposed as administrator, or by any other person having adequate knowledge of the company's affairs, not being a director, secretary, manager, or employee of the company³; and it must specify the purposes⁴ which, in the opinion of the person preparing it, may be achieved for the company by the making of an administration order⁵.

1 See para 150 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.2(1) (as originally enacted). See para 145 note 10 ante.

3 Ibid r 2.2(2) (as originally enacted).

4 I.e. the purposes particularly specified in the Insolvency Act 1986 s 8(3) (as originally enacted): see para 147 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.2(3) (as originally enacted). The extent of the necessary investigation and the amount of material to be provided to the court must be a matter for the judgment of the person who prepares the report and will vary from case to case. However, in the normal case, what the court needs is a concise assessment of the company's situation and of the prospects of an administration order achieving one or more of the statutory purposes. The latter will normally include an explanation of the availability of any finance required during the administration. Every endeavour should be made to avoid disproportionate investigation and expense. In some cases a brief investigation and report will be all that is required. Where the court has insufficient material on which to base its decision, but the proposed administrator is in court, he may offer to supplement the material by giving oral evidence. In such a case he should subsequently provide a supplemental report covering the matters on which oral evidence was given so that this can be placed on the court file: *Practice Note* [1994] 1 All ER 324, sub nom *Practice Statement* [1994] 1 WLR 160.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/152. Filing and withdrawal of petition.

152. Filing and withdrawal of petition.

The petition¹ and affidavit² must be filed in court³, with a sufficient number of copies for service and use⁴. Each of the copies delivered to the court must have applied to it the seal of the court and be issued to the petitioner, and on each copy there must be indorsed the date and time of filing⁵. The court must fix a venue⁶ for the hearing of the petition and this also must be indorsed on each copy of the petition issued under these provisions⁷. After the petition is filed, it is the duty of the petitioner to notify the court in writing of any winding-up petition presented against the company, as soon as he becomes aware of it⁸.

Where a petition is presented to the court, the petition may not be withdrawn except with the leave of the court⁹.

1 See para 148 ante.

2 See para 150 ante.

3 For the meaning of 'file in court' see para 129 note 3 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.5(1) (as originally enacted). See para 145 note 10 ante. As to the number of copies required for service and use see r 2.6 (as amended); and para 153 post.

5 Ibid r 2.5(2) (as originally enacted).

6 For the meaning of 'venue' see para 91 note 7 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.5(3) (as originally enacted).

8 Ibid r 2.5(4) (as originally enacted).

9 Insolvency Act 1986 s 9(2)(b). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the effect of the presentation of a petition see para 149 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/153. Notice, service and proof of service of petition.

153. Notice, service and proof of service of petition.

Where a petition is presented to the court¹, notice of the petition must be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver² of the company³. The petitioner must also forthwith after filing the petition give notice of its presentation to any enforcement officer⁴ or other officer who, to his knowledge, is charged with an execution or other legal process against the company or its property, and any person who, to his knowledge, has distrained against the company or its property⁵.

The petition⁶, together with a copy of the affidavit in support of it⁷ and the documents, other than the copy petition, exhibited to the affidavit, must be served:

- 237 (1) on any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company⁸;
- 238 (2) if an administrative receiver has been appointed, on him⁹;
- 239 (3) if there is pending a petition for the winding up of the company¹⁰, on the petitioner, and also on the provisional liquidator¹¹, if any¹²;
- 240 (4) on the person proposed as administrator¹³; and
- 241 (5) if the petition for the making of an administration order is presented by creditors of the company, on the company¹⁴.

Service of the petition must be effected by the petitioner, or his solicitor¹⁵, or by a person instructed by him or his solicitor, not less than five days before the date fixed for the hearing¹⁶, and must be effected:

- 242 (a) on the company, by delivering the documents to its registered office¹⁷;
- 243 (b) on any other person, by delivering the documents to his proper address¹⁸,

or, in either case, in such other manner as the court may direct¹⁹. If delivery to the company's registered office is not practicable, however, service may be effected by delivery to its last known principal place of business in England and Wales²⁰. Delivery of documents to any place may be made by leaving them there, or sending them by first class post²¹.

Service of the petition must be verified by affidavit, specifying the date on which, and the manner in which, service was effected²². The affidavit, with a sealed copy of the petition exhibited to it, must be filed in court²³ forthwith after service, and in any event not less than one day before the hearing of the petition²⁴.

¹ See para 152 ante.

² As to administrative receivers see para 380 et seq post; and as to the right to appoint an administrative receiver upon presentation of the petition see para 149 note 15 ante.

³ Insolvency Act 1986 s 9(2)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 9(2)(a) is modified in its application to the conduct of the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 11(2) (Sch 15A added by the Building Societies Act 1997 s

39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)); and para 145 ante.

Notice must also be given to such other persons as may be prescribed: Insolvency Act 1986 s 9(2)(a). 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. Where an administration petition is presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see para 147 text and notes 14-15 ante), notice must also be given to the Financial Services Authority: see the Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 4 (amended by SI 1998/1129). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

Where it is proposed that an administrator should be appointed, the person with power to appoint an administrative receiver should have an adequate opportunity to consider whether he wishes to exercise his power before it is extinguished by the appointment of an administrator: *Re a Company (No 00175 of 1987)* [1987] BCLC 467, 3 BCC 124. As to the extinction of the power to appoint an administrative receiver see para 157 post.

4 The Insolvency Rules 1986, SI 1986/1925, r 2.7(a) (as substituted) continues to refer to 'a sheriff' for these purposes but, by virtue of amendments made by the Courts Act 2003 (see eg the Insolvency Act 1986 s 184; and para 884 post), this should be read as referring to an enforcement or other officer.

5 Insolvency Rules 1986, SI 1986/1925, r 2.6A (added by SI 1987/1919). See para 145 note 10 ante.

6 le a copy of the petition issued by the court under the Insolvency Rules 1986, SI 1986/1925, r 2.5(2): see para 152 ante.

7 See para 150 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.6(1), (2)(a) (amended by SI 1987/1919).

9 Insolvency Rules 1986, SI 1986/1925, r 2.6(2)(b) (as originally enacted).

10 As to petitions to wind up a company see para 450 et seq post.

11 As to provisional liquidators see para 491 et seq post.

12 Insolvency Rules 1986, SI 1986/1925, r 2.6(2)(c) (as originally enacted).

13 Ibid r 2.6(2)(d) (as originally enacted).

14 Ibid r 2.6(3) (as originally enacted).

15 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

16 Insolvency Rules 1986, SI 1986/1925, r 2.7(1) (as originally enacted). The period of five days may be abridged under r 12.9 (see para 1053 post): *Re a Company (No 00175 of 1987)* [1987] BCLC 467, 3 BCC 124; *Re Gallidoro Trawlers Ltd* [1991] BCLC 411, [1991] BCC 691; *Cornhill Insurance plc v Cornhill Financial Services Ltd* [1993] BCLC 914 at 951, [1992] BCC 818 at 852, CA, per His Honour Judge Micklem. See, however, note 3 supra. In cases of great urgency, an administration order may be made upon an undertaking to present an administration petition: *Re Cavco Floors Ltd* [1990] BCLC 940, [1990] BCC 589; *Re Shearing & Loader Ltd* [1991] BCLC 764, [1991] BCC 232. See also *Re Chancery plc* [1991] BCLC 712, [1991] BCC 171 (administration order granted in respect of bank at short notice).

17 Insolvency Rules 1986, SI 1986/1925, r 2.7(2)(a) (as originally enacted). As to the company's registered office see COMPANIES vol 14 (2009) PARA 129.

18 Ibid r 2.7(2)(b) (as originally enacted). For these purposes, a person's proper address is any which he has previously notified as his address for service; but, if he has not notified any such address, service may be effected by delivery to his usual or last known address: r 2.7(4) (amended by SI 1987/1919). In the case, however, of a person who: (1) is an authorised deposit taker or former authorised deposit taker; (2) has appointed, or is or may be entitled to appoint, an administrative receiver of the company; and (3) has not notified an address for service, the proper address is the address of an office of that person where, to the knowledge of the petitioner, the company maintains a bank account or, where no such office is known to the petitioner, the registered office of that person, or, if there is no such office, his usual or last known address:

Insolvency Rules 1986, SI 1986/1925, r 2.7(4A) (added by SI 1987/1919; and amended by SI 2001/3649). For the meaning of 'authorised deposit taker' see para 147 note 4 ante.

19 Insolvency Rules 1986, SI 1986/1925, r 2.7(2)(c) (as originally enacted).

20 Ibid r 2.7(3) (as originally enacted).

21 Ibid r 2.7(5) (as originally enacted).

22 Ibid r 2.8(1) (as originally enacted). For the prescribed form of affidavit of service see rr 2.8(1), 12.7, Sch 4 Form 2.3 (as originally enacted).

23 For the meaning of 'file in court' see para 129 note 3 ante.

24 Insolvency Rules 1986, SI 1986/1925, r 2.8(2) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

153 Notice, service and proof of service of petition

NOTE 3--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941. SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

NOTE 4--Reference to a sheriff now to an enforcement officer: SI 1986/1925 r 2.7(a) (amended by SI 2005/527).

NOTE 15--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/154. Hearing of petition; court's powers on hearing petition.

154. Hearing of petition; court's powers on hearing petition.

At the hearing of the petition, any of the following may appear or be represented:

- 244 (1) the petitioner¹;
- 245 (2) in relation to insurers only, the Financial Services Authority²;
- 246 (3) the company³;
- 247 (4) any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company⁴;
- 248 (5) if an administrative receiver has been appointed, the administrative receiver⁵;
- 249 (6) any person who has presented a petition for the winding up of the company⁶;
- 250 (7) the person proposed for appointment as administrator⁷; and
- 251 (8) with the leave of the court, any other person who appears to have an interest justifying his appearance⁸.

The court will take into account on the hearing of the petition the interests of the company's creditors, secured and unsecured, and of its members and will have regard to which individual or individuals should be appointed administrator or administrators⁹. The weight given to the interests of the company's secured creditors will depend upon all the circumstances¹⁰. The court will consider the attitude of the company's creditors to any proposals which the proposed administrator is likely to put forward and the court may refuse to make an administration order where it is unlikely that the creditors will support the administrator's proposals¹¹. The court may decline to make an administration order where the company is solvent on a balance sheet basis and there is deadlock between its members which is unlikely to be resolved by the making of an administration order¹². Even if the petitioners' purpose in seeking an administration order was other than seeking to achieve the statutory purposes, it does not automatically follow that the petition was an abuse of process and liable to be struck out if it was plainly in the interests of the creditors for an order to be made¹³. The court will only make orders for disclosures of documents, the provision of information and directions for cross-examination in exceptional circumstances¹⁴.

Where the court is satisfied that there is an administrative receiver of the company, the court must dismiss the petition unless it is also satisfied either:

- 252 (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order¹⁵; or
- 253 (b) that, if an administration order were made, any security¹⁶ by virtue of which the receiver was appointed would be liable to be released or discharged as a transaction at an undervalue or a preference¹⁷, or be avoided under the provisions relating to the avoidance of floating charges¹⁸, or be challengeable¹⁹ under any rule of law in Scotland²⁰.

Subject to these provisions, on hearing the petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit²¹.

Without prejudice to the generality of these provisions, an interim order may restrict the exercise of any powers of the directors²² or of the company, whether by reference to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the company²³, or otherwise²⁴.

The court may make an administration order and require an administrator to report back to the court within a short period in order that the court may consider whether to allow the administration to continue²⁵. The court may also require an administrator to hold a creditors' meeting within a short period of the making of the order prior to his reporting back to the court²⁶.

If the court makes an administration order²⁷, the costs of the petitioner, and of any person appearing whose costs are allowed by the court, are payable as an expense of the administration²⁸. The court has a general discretion to make orders for costs, whether an administration order is made or not, but only in exceptional circumstances is the court likely to make an order for costs against the directors of the company personally where a petition for an administration order is dismissed and the directors have acted in good faith and on professional advice²⁹. If, on the dismissal of the petition for an administration order, the court makes a winding-up order, the court may order the costs of the petition for an administration order to be costs in the winding up³⁰.

1 Insolvency Rules 1986, SI 1986/1925, r 2.9(1)(a) (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.9(1)(aa) (added by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, r 4). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

3 Insolvency Rules 1986, SI 1986/1925, r 2.9(1)(b) (as originally enacted).

4 Ibid r 2.9(1)(c) (amended by SI 1987/1919).

5 Insolvency Rules 1986, SI 1986/1925, r 2.9(1)(d) (as originally enacted).

6 Ibid r 2.9(1)(e) (as originally enacted).

7 Ibid r 2.9(1)(f) (as originally enacted).

8 Ibid r 2.9(1)(g) (as originally enacted). As to the approach of the court when considering whether shareholders constitute an interested party and the need to control multiple appearances or representation see *Re Farnborough-Aircraft.com Ltd* [2002] EWHC 1224 (Ch), [2002] 2 BCLC 641.

9 The court will refuse to make an administration order in circumstances where it would unfairly prejudice individual creditors or groups of creditors of the company: *Cornhill Insurance plc v Cornhill Financial Services Ltd* [1993] BCLC 914 at 951, [1992] BCC 818 at 852, CA, per His Honour Judge Micklem. In the case of contributories, if it is apparent that the company is insolvent and that they would have no interest in an immediate winding up of the company, the court may decline to hear them on the petition: *Re Chelmsford City Football Club (1980) Ltd* [1991] BCC 133. See also *Re Maxwell Communication Corp'n plc* [1992] BCLC 465, [1992] BCC 372 (where the factors relevant in determining which person to appoint as administrator were considered). See also *Re Structures and Computers Ltd* [1998] 1 BCLC 292, [1998] BCC 348, in which it was held that the court had power to make an administration order despite the opposition of the insolvent company's major creditor.

10 *Re Consumer and Industrial Press Ltd* [1988] BCLC 177 at 181, 4 BCC 68 at 72 per Peter Gibson J; *Re Imperial Motors (UK) Ltd* [1990] BCLC 29, 5 BCC 214.

11 *Re SCL Building Services Ltd* [1990] BCLC 98, 5 BCC 746; *Re Arrows Ltd (No 3)* [1992] BCLC 555, [1992] BCC 131; *Re Land and Property Trust Co plc (No 2)* [1991] BCLC 849, sub nom *Re Land and Property Trust Co plc* [1991] BCC 446 (on appeal [1994] 1 BCLC 232, [1993] BCC 462, CA); *Re West Park Golf and Country Club* [1997] 1 BCLC 20; *Re Stallton Distribution Ltd* [2002] BCC 486.

- 12 *Re Business Properties Ltd* (1988) 4 BCC 684.
- 13 *Re Dianoor Jewels Ltd* [2001] 1 BCLC 450.
- 14 *Highberry Ltd v Colt Telecom Group plc* [2002] EWHC 2503 (Ch), [2003] 1 BCLC 290.
- 15 Insolvency Act 1986 s 9(3)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. The provisions of s 9(3), (4) are modified in their application to the conduct of the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 11(3) (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)); and para 145 ante.
- 16 For the meaning of 'security' see para 109 note 10 ante.
- 17 Ie under the Insolvency Act 1986 ss 238-240 (as amended): see para 843 et seq post.
- 18 Ie under ibid s 245 (as amended): see para 861 et seq post.
- 19 Ie under ibid s 242 (gratuitous alienation) or s 243 (unfair preference) or any rule of law in Scotland.
- 20 Ibid s 9(3)(b)(i)-(iii). See also *Re Croftbell Ltd* [1990] BCLC 844, [1990] BCC 781. As from a day to be appointed, it is additionally provided that the court must dismiss the petition unless it is also satisfied that if an administration order were made, any security by virtue of which the receiver was appointed would be void against the administrator to any extent by virtue of the Companies Act 1985 Pt XII (ss 395-430F) (as amended) (see COMPANIES vol 15 (2009) PARA 1277 et seq): Insolvency Act 1986 s 9(3)(b)(i) (prospectively added by the Companies Act 1989 s 107, Sch 16 para 3(1), (2)). At the date at which this volume states the law no such day had been appointed.
- 21 Insolvency Act 1986 s 9(4). The court has no power to appoint an interim administrator, but under s 9(4) it may where appropriate (eg if satisfied that the assets are in jeopardy) appoint a suitable person to take control of the company and to manage its affairs if the petition for an administration order is adjourned in order to enable the person entitled to appoint an administrative receiver to consider whether he wishes to do so. Once an administrative receiver has been appointed, subject to the proviso in s 9(3) (see the text and notes 15-20 supra), the court is required to dismiss the petition for an administration order. If a person has been appointed to preserve the property of a company, the administrative receiver may apply to the court to accelerate the hearing of the petition in order to dismiss it if he wishes to take immediate possession of the assets; alternatively, the order appointing the person to manage the affairs of the company may be framed to endure until the hearing of the adjourned petition, or the earlier appointment of an administrative receiver: *Re a Company (No 00175 of 1987)* [1987] BCLC 467, 3 BCC 124.
- 22 As to the meaning of 'director' see para 5 note 2 ante.
- 23 As to insolvency practitioners and their qualification see para 8 et seq ante.
- 24 Insolvency Act 1986 s 9(5). See also *Re Gallidoro Trawlers Ltd* [1991] BCLC 411, [1991] BCC 691 (court would not appoint interim manager on an administration order).
- 25 *Practice Note* [1994] 1 All ER 324, sub nom *Practice Statement* [1994] 1 WLR 160.
- 26 *Practice Note* [1994] 1 All ER 324, sub nom *Practice Statement* [1994] 1 WLR 160.
- 27 See para 146 ante.
- 28 Insolvency Rules 1986, SI 1986/1925, r 2.9(2) (as originally enacted).
- 29 *Re Land and Property Trust Co plc* [1991] 3 All ER 409, [1991] 1 WLR 601, CA; *Re Tajik Air Ltd* [1996] 1 BCLC 317, [1996] BCC 368.
- 30 *Re Gosscott (Groundworks) Ltd* [1988] BCLC 363, 4 BCC 372.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

154 Hearing of petition; court's powers on hearing petition

NOTE 15--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/155. Notice of administration order.

155. Notice of administration order.

If the court makes an administration order, it must forthwith give notice¹ to the person appointed as administrator². Two sealed copies of the order must be sent by the court to the administrator³. If the court makes any other order⁴, it must give directions as to the persons to whom, and how, notice of it is to be given⁵.

1 For the prescribed form of notice to the administrator of an administration order see the Insolvency Rules 1986, SI 1986/1925, rr 2.10, 12.7, Sch 4 Form 2.4A (added by SI 1987/1919). See para 145 note 10 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.10(1) (as originally enacted). As to the duties of the administrator upon the making of an administration order see paras 156, 160 post.

3 Ibid r 2.10(4) (as originally enacted). One of these copies must be sent by the administrator to the registrar of companies in accordance with the Insolvency Act 1986 s 21(2) (as originally enacted) (see para 160 post): Insolvency Rules 1986, SI 1986/1925, r 2.10(4) (as originally enacted). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 Ie under the Insolvency Act 1986 s 9(4): see para 154 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.10(5) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/156. Notification of administration order.

156. Notification of administration order.

Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, must also contain the administrator's name and a statement that the affairs, business¹ and property² of the company are being managed by the administrator³. If default is made in complying with this provision, the company, and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer⁴ of the company, is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum⁵.

1 For these purposes, 'business' includes a trade or profession: Insolvency Act 1986 s 436.

2 As to the meaning of 'property' see para 489 note 8 post.

3 Insolvency Act 1986 s 12(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 12 is modified in its application to certain special administration regimes: see the Railways Act 1993 Sch 6 Pt II paras 12, 14, Pt III paras 20-21 (railway administration orders); the Greater London Authority Act 1999 Sch 14 Pt II paras 12, 14, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 14 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

4 For the meaning of 'officer' see para 690 post. As to offences by bodies corporate see para 928 post.

5 Insolvency Act 1986 ss 12(2), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

156 Notification of administration order

NOTE 3--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(ii) Petition and Procedure on Petition; Effect of Administration Orders/157. Effect of administration order.

157. Effect of administration order.

On the making of an administration order:

- 254 (1) any petition for the winding up of the company must be dismissed¹; and
- 255 (2) any administrative receiver of the company must vacate office²,

and, where an administration order has been made, any receiver of part of the company's property³ must vacate office on being required to do so by the administrator⁴.

During the period for which an administration order is in force:

- 256 (a) no resolution may be passed or order made for the winding up of the company⁵;
- 257 (b) no administrative receiver of the company may be appointed⁶;
- 258 (c) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose⁷;
- 259 (d) no other steps may be taken to enforce any security⁸ over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement⁹, conditional sale agreement¹⁰, chattel leasing agreement¹¹ or retention of title agreement¹², except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose¹³; and
- 260 (e) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose¹⁴.

The consent of the administrator should be sought before any application for leave is made to the court¹⁵. Although the court has a wide discretion as to whether or not to grant leave, the matters to which the court will have regard in deciding whether to grant leave, and if so on what terms, and to which administrators should have regard in determining whether or not they should give consent, and if so on what terms, include the following:

- 261 (i) it is for the person seeking leave to make out his case;
- 262 (ii) leave will normally be given if the exercise of a proprietary right by a lessor or hirer, or the repossession of land or goods, is unlikely to impede the achievement of the purpose or purposes for which the administration order was made; and
- 263 (iii) in cases where the exercise of the right is likely to impede the achievement of the purpose or purposes for which the administration order was made, the court

has to carry out a balancing exercise, balancing the legitimate interests of the applicant and the legitimate interests of the other creditors of the company; great importance or weight will be given to the proprietary interests of the applicant because an administration for the benefit of unsecured creditors should not be conducted at the expense of those seeking to exercise their proprietary rights, save to the extent that this is unavoidable; it will normally be a sufficient ground for the grant of leave if significant loss would be caused to the applicant by a refusal to grant leave, but, if substantially greater loss would be caused to others by the grant of leave, or loss which is out of all proportion to the benefit which the grant of leave would confer on the applicant, that may outweigh the loss to the applicant caused by a refusal¹⁶.

Cases where leave is refused but terms are imposed on the administrator may be expected to arise frequently; for example, the permanent loss to a lessor flowing from his inability to recover his property will normally be small if the administrator is required to pay the current rent and, since the business of a company in administration should generally be sufficient to hold down current outgoings, such a term may be a normal term to impose¹⁷.

An administrator is an officer of the court and any act which could constitute an interference with his possession or right to possession is capable of amounting to a contempt of court; but a refusal by a creditor to do an act at the request of the administrator which will lead to the loss of his security will not constitute a contempt of court pending prompt application for leave¹⁸.

Where administrators retain goods after the time when they ought to have consented to the owner's demand for retaking possession, the court may direct the administrators to be personally liable for compensation or to have a right of recoupment against the company's assets, or to be released from liability¹⁹.

1 Insolvency Act 1986 s 11(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 11 is modified in its application to special administration regimes: see the Water Industry Act 1991 Sch 3 Pt I paras 1, 2, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 2, Pt II paras 12, 13, Pt III paras 20-21 (Sch 6 Pt I para 2 amended by the Transport Act 2000 s 252, Sch 27 paras 17, 48) (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-4, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 2, Pt II paras 12, 13, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 13 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

2 Insolvency Act 1986 s 11(1)(b). Where at any time an administrative receiver of the company has vacated office under s 11(1)(b), or a receiver of part of the company's property has vacated office under s 11(2) (see the text and notes 3-4 infra): (1) his remuneration and any expenses properly incurred by him; and (2) any indemnity to which he is entitled out of the assets of the company, constitute a charge on and, subject to s 11(3) (see the text and notes 5-14 infra), must be paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed: s 11(4). Neither an administrative receiver nor a receiver who so vacates office is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by s 40 (see COMPANIES vol 15 (2009) PARA 1334) or s 59 (Scotland): s 11(5).

3 As to the meaning of 'property' see para 489 note 8 post.

4 Insolvency Act 1986 s 11(2). As to the receiver's remuneration, expenses and claim to an indemnity see note 2 supra.

5 Ibid s 11(3)(a). Where an administration order relating to a limited liability partnership is made, s 11(3)(a) provides that no determination may be made nor may an order be made for the winding up of the limited liability partnership: see s 11(3)(a); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

6 Insolvency Act 1986 s 11(3)(b).

7 Ibid s 11(3)(ba) (added by the Insolvency Act 2000 s 9(3)). This provision clarifies the position: *Re Lomax Leisure Ltd* [2000] Ch 502, [1999] 3 All ER 22.

8 For the meaning of 'security' see para 109 note 10 ante. See also *Re Park Air Services plc* [2000] 2 AC 172, [1999] 1 All ER 673, HL.

9 As to the meaning of 'hire-purchase agreement' see para 149 note 8 ante.

10 As to the meaning of 'conditional sale agreement' see para 149 note 9 ante.

11 As to chattel leasing agreements see PERSONAL PROPERTY vol 35 (Reissue) para 1228.

12 As to retention of title agreements see COMPANIES vol 15 (2009) PARA 1285.

13 Insolvency Act 1986 ss 10(4), 11(3)(c). See *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA (airport's statutory right to detain an aircraft for failure to pay airport charges amounted to 'security' and the exercise of such a right of detention constituted the taking of a step to enforce security); *Exchange Travel Agency Ltd v Triton Property Trust plc* [1991] BCLC 396, [1991] BCC 341 (the right created by a proviso in a lease for re-entry on non-payment of rent amounted to 'security'); *Re Sabre International Products Ltd* [1991] BCLC 470, [1991] BCC 694 (the holding on to the company's goods was held to be the exercise of a lien, which amounted to 'security'); *Re Atlantic Computer Systems plc* [1992] Ch 505, [1992] 1 All ER 476, CA (computers leased by company and sublet to end-users held to remain in the company's possession for the purposes of the Insolvency Act 1986 s 11(3)(c)). See also *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618, [1995] BCC 830 (assertion of solicitors' lien held to constitute taking a step to enforce security over the company's property; it was also accepted as common ground in this case that a breach of the Insolvency Act 1986 s 11 (as amended) could give rise to a claim in damages).

14 Insolvency Act 1986 s 11(3)(d). See *Air Ecosse Ltd v Civil Aviation Authority* 1987 SLT 751 (petition by competitor of airline subject to administration order to Civil Aviation Authority to revoke airline's licence held not to constitute 'other proceedings' or 'other legal process' against the company); *Exchange Travel Agency Ltd v Triton Property Trust plc* [1991] BCLC 396, [1991] BCC 341 (the exercise of a right of re-entry for non-payment of rent constituted the commencement of 'other legal process'); *Re A Debtor (No 13A-IO-95)*, *Re a Debtor (No 14A-IO-95)* [1996] 1 All ER 691, [1995] 1 WLR 1127 (peaceable re-entry by landlord for breach of covenant held not to constitute 'legal process'); *Re Olympia & York Canary Wharf Ltd* [1993] BCLC 453, sub nom *Re Olympia & York Canary Wharf Ltd, American Express Europe Ltd v Adamson* [1993] BCC 154 (service of contractual notice terminating contract did not constitute 'other legal process'). See also *Carr v British International Helicopters Ltd (in liquidation)* [1994] 2 BCLC 474, [1993] BCC 855, EAT (proceedings before industrial tribunal held to constitute 'proceedings').

The Insolvency Act 1986 s 11(3)(d) is not limited to proceedings brought by a company's creditors: *Biosource Technologies Inc v Axis Genetics plc (in administration)* [2000] 1 BCLC 286, [2000] FSR 448 (proceedings for the revocation of a European patent). Cf *Re Railtrack plc (in railway administration)*, *Winsor v Bloom* [2002] EWCA Civ 955, [2002] 4 All ER 435, [2002] 2 BCLC 755 (determinations by rail regulator under the Railways Act 1993 are not included in the term 'no other proceedings' in the Insolvency Act 1986 s 11(3)(d)).

See also *Re Polly Peck International plc (in administration) (No 2)* [1998] 3 All ER 812, [1998] 2 BCLC 185, CA (leave refused where effect of proceedings was to prevent assets from being distributed amongst creditors); *A Straume (UK) Ltd v Bradlor Developments Ltd* [2000] BCC 333, 2 TCLR 409 (adjudication of a dispute as allowed by the Housing Grants, Construction and Regeneration Act 1996 s 108 (see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) para 207) constitutes 'other proceedings' and therefore requires leave of the court); *Holdenhurst Securities plc v Cohen* [2001] 1 BCLC 460 (application under the Insolvency Act 1986 s 7(3) (see para 133 ante) was not struck out or stayed); *Re Rhondda Waste Disposal Ltd* [2001] Ch 57, [2003] 3 WLR 1304, CA (criminal proceedings held to constitute 'other proceedings' and required leave).

As to the rights of third parties against insurers upon the making of an administration order see the Third Parties (Rights against Insurers) Act 1930; and INSURANCE vol 25 (2003 Reissue) para 679.

15 *Re Atlantic Computer Systems plc* [1992] Ch 505 at 542, [1992] 1 All ER 476 at 501, CA, per Nicholls LJ.

16 *Re Atlantic Computer Systems plc* [1992] Ch 505 at 542-544, [1992] 1 All ER 476 at 500-502, CA, per Nicholls LJ. See also *Re David Meek Plant Ltd*, *Re David Meek Access Ltd* [1994] 1 BCLC 680, [1993] BCC 175. The function of the court is to perform a balancing act between the legitimate interests of the applicant creditor and those of the general body of creditors whose interests the administrators seek to protect by the discharge of their statutory duties: *Re Divine Solutions UK Ltd* [2003] EWHC 1931 (Ch), [2004] 1 BCLC 373. The conduct of the parties may also be a relevant consideration; leave was refused where the applicants had accepted benefits

under the administration and had only sought to enforce their security at a later stage: *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA. As to the need for a party to clarify its position to the administrator and to apply to court promptly if necessary see *Re Salmat International Ltd* [2001] BCC 796. Cf *Re City Logistics Ltd* [2002] EWHC 757 (Ch), [2002] 2 BCLC 103, in which a retention of title claimant issued proceedings prematurely.

17 *Re Atlantic Computer Systems plc* [1992] Ch 505 at 543, [1992] 1 All ER 476 at 502, CA, per Nicholls LJ.

18 *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA; *Re Sabre International Products Ltd* [1991] BCLC 470, [1991] BCC 694.

19 *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1992] 1 WLR 1253.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

157 Effect of administration order

NOTE 1--Railways Act 1993 Sch 6 para 1 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

NOTE 14--See also *Hudson v Gambling Commission (Re Frankie (Golders Green) Ltd)* [2010] All ER (D) 59 (May).

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(iii) Administrators

A. APPOINTMENT AND STATUS

158. Appointment of administrators.

The administrator of a company must be appointed by the administration order¹. Where an administration order is made in relation to a company, the administrator must be a person who is qualified to act as an insolvency practitioner in relation to the company².

Where an appointment of a person to the office of administrator relates to more than one person or has the effect that the office is to be held by more than one person, the appointment must declare whether any act required or authorised under any enactment to be done by the administrator is to be done by all or any one of the persons for the time being holding the office of administrator³.

¹ Insolvency Act 1986 s 13(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the appointment of an administrator in the event of a vacancy see para 188 post.

² Ibid s 230(1) (applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to insolvency practitioners and their qualification see para 8 et seq ante. As to the approach of the courts in deciding which of several persons proposed as administrators should be appointed, and where there are potential conflicts of interest, see *Re Maxwell Communication Corp'n plc* [1992] BCLC 465, [1992] BCC 372.

³ Insolvency Act 1986 s 231(1), (2) (applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/
(iii) Administrators/A. APPOINTMENT AND STATUS/159. Status of administrator; validity of administrator's acts.

159. Status of administrator; validity of administrator's acts.

In exercising his powers¹, the administrator is deemed to act as the company's agent²; and the acts of an individual as administrator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications³. The administrator is also deemed to be an officer of the company⁴ and an officer of the court⁵.

1 See para 163 post.

2 Insolvency Act 1986 s 14(5). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Contracts entered into by an administrator as agent on behalf of the company bind the company but not the administrator personally: *Re Atlantic Computer Systems plc* [1992] Ch 505, [1992] 1 All ER 476, CA. See also *Re Hartlebury Printers Ltd (in liquidation)* [1993] BCLC 902, [1993] 1 All ER 470 (in dismissing employees of a company, an administrator acts as the agent of the company). The making of an administration order does not in general constitute authority for the administrator to break the company's contracts so as to defeat the contractual rights of the third party, unlike the position of an administrative receiver; and in an appropriate case the court may grant an injunction restraining the company from breaking the contract: *Astor Chemicals Ltd v Synthetic Technology Ltd* [1990] BCLC 1, [1990] BCC 97; *Re P & C and R & T (Stockport) Ltd* [1991] BCLC 366, [1991] BCC 98.

3 Insolvency Act 1986 s 232 (applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante).

4 *Re Home Treat Ltd* [1991] BCLC 705, [1991] BCC 165.

5 *Re Atlantic Computer Systems plc* [1992] Ch 505, [1992] 1 All ER 476, CA. The administrator is, therefore, subject to the rule in *Re Condon, ex p James* (1874) 9 Ch App 609 (see para 571 post; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 459). See also *Re Mirror Group (Holdings) Ltd* [1993] BCLC 538, [1992] BCC 972 (where it was held that the court could exercise control over the administrators as officers of the court and give directions to that end).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/160. Notices and advertisement on making of administration order.

B. DUTIES AND POWERS IN GENERAL

160. Notices and advertisement on making of administration order.

Where an administration order has been made, the administrator must forthwith send to the company a notice of the order¹ and within 28 days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company, so far as he is aware of their addresses². The administrator must also forthwith give notice of the making of the order:

- 264 (1) to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company³;
- 265 (2) if an administrative receiver has been appointed, to him⁴;
- 266 (3) if there is pending a petition for the winding up of the company, to the petitioner, and also to the provisional liquidator, if any⁵; and
- 267 (4) to the registrar of companies⁶.

Forthwith after the order is made, the administrator must also advertise its making once in the Gazette⁷, and once in such newspaper as he thinks most appropriate for ensuring that the order comes to the notice of the company's creditors⁸.

Where an administration order has been made, the administrator must also, within 14 days after the making of the order, send an office copy of the order to the registrar of companies and to such other persons as may be prescribed⁹.

If the administrator without reasonable excuse fails to comply with these provisions, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum¹⁰.

1 Insolvency Act 1986 s 21(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante.

2 Ibid s 21(1)(b).

3 Insolvency Rules 1986, SI 1986/1925, r 2.10(3)(a) (substituted by SI 1987/1919). See para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.10(3)(b) (as originally enacted).

5 Ibid r 2.10(3)(c) (as originally enacted).

6 Ibid r 2.10(3)(d) (as originally enacted). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed form of notice of an administration order to be given to the registrar see rr 2.10, 12.7, Sch 4 Form 2.6 (as originally enacted).

7 As to the Gazette, and the gazetting of notices, see para 1048 post.

8 Insolvency Act 1986 s 21(1)(a); Insolvency Rules 1986, SI 1986/1935, r 2.10(2) (as originally enacted). For the prescribed form of notice of an administration order for newspapers see Sch 4 Form 2.5 (as originally enacted).

9 Insolvency Act 1986 s 21(2). As to the office copy of the order to be sent to the registrar of companies see para 155 ante. For the prescribed form to be sent to the registrar of companies attaching the office copy of the administration order see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.7 (as originally enacted).

The Insolvency Act 1986 s 21(2) is modified in its application to certain special administration regimes (see para 145 ante): see the Water Industry Act 1991 Sch 3 Pt I paras 1, 8, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 8, Pt III paras 20-21 (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 10, Pt II paras 13, 14, 15 (licensed air traffic services companies); and the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 8, Pt III paras 20-21 (public-private partnership companies).

10 Insolvency Act 1986 ss 21(3), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

160 Notices and advertisement on making of administration order

TEXT AND NOTE 9--Insolvency Act 1986 s 21(2) (as it has effect by virtue of the Enterprise Act 2002 s 249) amended: SI 2009/1941.

NOTE 9--Railways Act 1993 Sch 6 paras 1, 8 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/161. General duties of administrator.

161. General duties of administrator.

The administrator of a company must, on his appointment, take into his custody or under his control all the property¹ to which the company is or appears to be entitled²; and he must manage the affairs, business³ and property of the company at any time before proposals have been approved⁴, with or without modifications⁵, in accordance with any directions given by the court⁶, and at any time after proposals have been so approved, in accordance with those proposals as from time to time revised, whether by him or a predecessor of his⁷.

An administrator owes a duty to a company over which he is appointed to take reasonable care to obtain the best price that the circumstances as he reasonably perceives them to be permit, including a duty to take reasonable care in choosing the time at which to sell the property; an administrator is a professional insolvency practitioner and will only be liable if he makes an error which a reasonably skilled and careful insolvency practitioner would not have made⁸.

The administrator must summon a meeting of the company's creditors if he is requested to do so⁹ by one-tenth, in value, of the company's creditors, or if he is directed to do so by the court¹⁰.

1 As to the meaning of 'property' see para 489 note 8 post.

2 Insolvency Act 1986 s 17(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 17 is modified in its application to special administration regimes: see the Water Industry Act 1991 Sch 3 Pt I paras 1, 6, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 6, Pt II paras 12, 17, Pt III paras 20-21 (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 8, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 6, Pt II paras 12, 17, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 19 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

3 As to the meaning of 'business' see para 156 note 1 ante.

4 Ie under the Insolvency Act 1986 s 24: see para 178 post.

5 For the meaning of 'modifications' see para 84 note 5 ante.

6 Directions may be given upon the making of the administration order, upon an application by the administrator (see the Insolvency Act 1986 s 14(3); and para 163 post), upon an application by a creditor of the company (*Re Mirror Group (Holdings) Ltd* [1993] BCLC 538, [1992] BCC 972), or upon an application by the owner of goods held by the administrator (*Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1992] 1 WLR 1253). Where the administrator proposes to sell practically all the assets of the company before proposals have been approved, he should apply to the court for a direction to sell: *Re Consumer and Industrial Press Ltd (No 2)* (1987) 4 BCC 72; cf *Re NS Distribution Ltd* [1990] BCLC 169 (sale of one of company's assets prior to approval of proposals a matter for administrator's judgment). See also *Re Montin Ltd* [1999] 1 BCLC 663 (administrator required leave for agreement to sell company's assets prior to any meeting of creditors, as sale fell within expression 'managing the affairs, business and property of the company'); *Re Dana (UK) Ltd* [1999] 2 BCLC 239; *Re Osmosis Group Ltd* [1999] 2 BCLC 329; *Re PD Fuels Ltd* [1999] BCC 450. An administrator may sell company assets without a direction of the court prior to the creditors' meeting to approve his proposals: *Re T & D Industries plc (in administration)*, *Re T & D Automotive Ltd (in administration)* [2000] 1 All ER 333, [2000] 1 WLR 646; *Re Ciro Citterio Menswear plc*, *Thackrar v Johal* [2002] EWHC 897 (Ch), [2002] BPIR 903. The court will not interfere with administrators' commercial decisions unless they are clearly wrong in application of the law or conspicuously unfair to a particular creditor or

contractor of the company: *MTI Trading Systems Ltd v Winter* [1998] BCC 591 at 595 per Neuberger J; *Re CE King Ltd (in administration)* [2000] 2 BCLC 297.

7 Insolvency Act 1986 s 17(2).

8 *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760, sub nom *Re Charnley Davies Ltd* [1990] BCC 605. Unless there is some special relationship, an administrator owes no general common law duty of care to unsecured creditors in relation to his conduct of the administration: *Kyrris v Oldham, Royle v Oldham* [2003] EWCA Civ 1506, [2004] 1 BCLC 305.

9 As to the requisitioning of such meetings see para 192 post.

10 Insolvency Act 1986 s 17(3). As to meetings of the company's creditors see para 2125 et seq post; and as to the administrator's duty to keep creditors informed of what he is proposing see para 175 note 1 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

161 General duties of administrator

NOTE 2--Railways Act 1993 Sch 6 para 1 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/162. Discharge or variation of administration order.

162. Discharge or variation of administration order.

The administrator of a company may at any time apply to the court for the administration order to be discharged or to be varied so as to specify an additional purpose¹; and he must make such an application if it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement², or he is required to do so by a meeting of the company's creditors summoned for the purpose³. On the hearing of such an application, the court may by order discharge or vary the administration order and make such consequential provision resulting directly or indirectly from the discharge of the administration order as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit⁴.

Where the administration order is discharged or varied, the administrator must, within 14 days after the making of the order effecting the discharge or variation, send an office copy of that order to the registrar of companies⁵; and, if the administrator without reasonable excuse fails to comply with this requirement, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁶.

Where the administrator intends to apply to the court under these provisions for the administration order to be discharged at a time before he has sent a statement of his proposals to creditors⁷, he must, at least ten days before he makes such an application, send to all creditors of the company, so far as he is aware of their addresses, a report containing specified information⁸.

1 Insolvency Act 1986 s 18(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. In relation to insurers, application may additionally be made by the Financial Services Authority: s 18(1) (modified by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, Schedule para 2). See para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq. As to the specified purposes see para 147 ante. As to the discharge of the order as part of a group restructuring, which was opposed, see *Re Olympia & York Canary Wharf Ltd (No 3)* [1994] 1 BCLC 702. A creditor of the company may apply to have the administration order set aside pursuant to the general power to review, rescind or vary orders made in the exercise of insolvency jurisdiction under the Insolvency Rules 1986, SI 1986/1925, r 7.47 (see para 1030 post): *Cornhill Insurance plc v Cornhill Financial Services Ltd* [1993] BCLC 914 at 951, [1992] BCC 818 at 852, CA, per His Honour Judge Micklem. As to the discharge of an administration order prior to the company entering voluntary winding up see *Re Norditrac (UK) Ltd* [2000] 1 All ER 369, [2000] 1 WLR 343. See also *Re Oakhouse Property Holdings Ltd* [2003] BPIR 469.

The Insolvency Act 1986 s 18 is modified in its application to certain special administration regimes (see para 145 ante): see the Water Industry Act 1991 Sch 3 Pt I paras 1, 7, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 7, Pt III paras 20-21 (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 9, Pt II paras 13, 14, 15 (licensed air traffic services companies); and the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 7, Pt III paras 20-21 (public-private partnership companies).

2 Insolvency Act 1986 s 18(2)(a).

3 Ibid s 18(2)(b). See *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408 (administration order discharged; company ordered to be wound up by the court; administrator appointed liquidator under the

Insolvency Act 1986 s 140 (as originally enacted) (see para 558 post)). As to meetings of the company's creditors see paras 161 ante, 192 post.

4 Insolvency Act 1986 s 18(3). See also *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408. See *Re UCT (UK) Ltd (in administration)* [2001] 2 All ER 186, [2001] 1 WLR 436 (direction by court to administrators to make a provision even though it took effect before discharge). The power may be exercised only in respect of present administrators, not future liquidators: *Re Powerstore (Trading) Ltd; Re Homepower Stores Ltd* [1998] 1 All ER 121, [1997] 1 WLR 1280. The court ought not to discharge an administration order simply because there is a dispute as to the locus standi of the applicant: *Re MTI Trading Systems Ltd (in administration)* [1998] 2 BCLC 246. The court has power, in the exercise of its inherent jurisdiction over administrators, to authorise the administrators of a company going into voluntary liquidation, either to pay those persons who would be preferential creditors on a compulsory liquidation, or to pay to someone on trust for them, the sums which would be due to the preferential creditors if the company was put into compulsory liquidation: *Re Mark One (Oxford Street) plc* [1999] 1 All ER 608, [1999] 1 WLR 1445. Such an order cannot, however, be used to give directions to any subsequently appointed liquidators: *Re MT Realisations Ltd* [2003] EWHC 2895 (Ch), [2004] 1 All ER 577, [2004] 1 BCLC 119.

5 Insolvency Act 1986 s 18(4). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed forms of notice of discharge or variation of administration order see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Forms 2.19, 2.20 (as originally enacted). See para 145 note 10 ante.

6 Insolvency Act 1986 ss 18(5), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

7 In accordance with the Insolvency Act 1986 s 23(1): see para 175 post.

8 Insolvency Rules 1986, SI 1986/1925, r 2.16(2) (added by SI 1987/1919). Cf *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408. The specified information is that set out in the Insolvency Rules 1986, SI 1986/1925, r 2.16(1)(a)-(f)(i) (as amended) (see para 176 post), save for the details of the manner in which the affairs and business of the company would continue to be managed and financed if the administrator's proposals were to be approved.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

162 Discharge or variation of administration order

NOTE 1--Railways Act 1993 Sch 6 para 7 amended: Railways Act 2005 Sch 13 Pt 1. Railways Act 1993 Sch 6 para 1; Greater London Authority Act 1999 Sch 14 paras 1, 7 amended: SI 2009/1941.

NOTE 4--See also *Re Lune Metal Products Ltd (in administration)* [2006] EWCA Civ 1720, [2007] Bus LR 589 (no jurisdiction under 1986 Act s 18(3) as administrators not making application for discharge); and *Re Newscreen Media Group (in liquidation); Hardy v McLoughlin* [2009] EWHC 944 (Ch), [2009] 2 BCLC 353.

TEXT AND NOTE 5--Insolvency Act 1986 s 18(4) (as it has effect by virtue of the Enterprise Act 2002 s 249) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/163. General powers of administrator.

163. General powers of administrator.

The administrator of a company may do all such things as may be necessary for the management of the affairs, business¹ and property² of the company³, and, without prejudice to the generality of these provisions, he has the following powers⁴:

- 268 (1) power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him⁵ expedient⁶;
- 269 (2) power to sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, to sell, feu, hire out or otherwise dispose of the property of the company by public roup or private bargain⁷;
- 270 (3) power to raise or borrow money and grant security⁸ therefor over the property of the company⁹;
- 271 (4) power to appoint a solicitor¹⁰ or accountant or other professionally qualified person to assist him in the performance of his functions¹¹;
- 272 (5) power to bring and defend any claim or other legal proceedings in the name of and on behalf of the company¹²;
- 273 (6) power to refer to arbitration any question affecting the company¹³;
- 274 (7) power to effect and maintain insurances in respect of the business and property of the company¹⁴;
- 275 (8) power to use the company's seal¹⁵;
- 276 (9) power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document¹⁶;
- 277 (10) power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company¹⁷;
- 278 (11) power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees¹⁸;
- 279 (12) power to do all such things, including the carrying out of works, as may be necessary for the realisation of the property of the company¹⁹;
- 280 (13) power to make any payment which is necessary or incidental to the performance of his functions²⁰;
- 281 (14) power to carry on the business of the company²¹;
- 282 (15) power to establish subsidiaries of the company²²;
- 283 (16) power to transfer to subsidiaries of the company the whole or any part of the business and property of the company²³;
- 284 (17) power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company²⁴;
- 285 (18) power to make any arrangement or compromise on behalf of the company²⁵;
- 286 (19) power to call up any uncalled capital of the company²⁶;
- 287 (20) power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person²⁷;
- 288 (21) power to present or defend a petition for the winding up of the company²⁸;
- 289 (22) power to change the situation of the company's registered office²⁹; and

290 (23) power to do all things incidental to the exercise of the above powers³⁰.

Where the administration relates to an insurer, the administrator may additionally make any payments due to a creditor or any payment on account of any sum which may become due to a creditor³¹.

The administrator also has power to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise³², and to call any meeting of the members³³ or creditors of the company³⁴; and he may apply to the court³⁵ for directions in relation to any particular matter arising in connection with the carrying out of his functions³⁶.

Any power conferred on the company or its officers, whether by the Insolvency Act 1986 or the Companies Act 1985 or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases³⁷.

In exercising his powers the administrator is deemed to act as the company's agent³⁸. A person dealing with the administrator in good faith and for value is not, however, concerned to inquire whether the administrator is acting within his powers³⁹.

The administrator also has power to make a proposal for a voluntary arrangement in relation to the company⁴⁰ and to present a petition for the winding up of the company⁴¹.

1 As to the meaning of 'business' see para 156 note 1 ante. The duties of the administrator can include duties in relation to the management of a company pension scheme: *Polly Peck International plc (in administration) v Henry* [1999] 1 BCLC 407.

2 As to the meaning of 'property' see para 489 note 8 post.

3 Insolvency Act 1986 s 14(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 14 is modified in its application to special administration regimes: see the Water Industry Act 1991 Sch 3 Pt I paras 1, 4, Pt II paras 11-12 (as amended) (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 4, Pt II paras 12, 15, Pt III paras 20-21 (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 6, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 4, Pt II paras 12, 15, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 16 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), (2), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

4 Insolvency Act 1986 s 14(1)(b). The powers set out in Sch 1 are modified in relation to certain special administration regimes: see the Railways Act 1993 Sch 6 Pt II paras 12, 19, Pt III paras 20-21 (railway administration orders); and the Greater London Authority Act 1999 Sch 14 Pt II paras 12, 19, Pt III paras 20-21 (public-private partnership companies).

An administrative receiver has the like powers, except in so far as they are inconsistent with any of the provisions of the debentures by virtue of which he is appointed: see the Insolvency Act 1986 s 42(1), Sch 1; and para 396 post.

The powers of the administrator include the powers exercisable by the directors of the company prior to the making of the administration order: *Denny v Yeldon* [1995] 3 All ER 624, [1995] 1 BCLC 560. As to the court's jurisdiction under the Insolvency Act 1986 s 14(1), Sch 1 see *Re Powerstore (Trading) Ltd, Re Homepower Stores Ltd* [1998] 1 All ER 121, [1997] 1 WLR 1280.

5 In the application of the Insolvency Act 1986 Sch 1 to the administrator of a company, the words 'he' and 'him' refer to the administrator: s 14(1).

6 Ibid Sch 1 para 1.

7 Ibid Sch 1 para 2 (amended by the Abolition of Feudal Tenure (Scotland) Act 2000 s 76(2), Sch 13 Pt I).

8 For the meaning of 'security' see para 109 note 10 ante.

9 Insolvency Act 1986 Sch 1 para 3.

10 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

11 Insolvency Act 1986 Sch 1 para 4.

12 Ibid Sch 1 para 5.

13 Ibid Sch 1 para 6.

14 Ibid Sch 1 para 7.

15 Ibid Sch 1 para 8.

16 Ibid Sch 1 para 9.

17 Ibid Sch 1 para 10.

18 Ibid Sch 1 para 11.

19 Ibid Sch 1 para 12.

20 Ibid Sch 1 para 13. This power is wide enough to permit a distribution to creditors on the same basis as in a winding up if there would otherwise be a significant prejudice to the creditors and there would be no significant or practical risk of creditors emerging thereafter who were not known: see *Re John Slack Ltd* [1995] BCC 1116; *Re WBSL Realisations 1992 Ltd, Re Ward Group plc* [1995] 2 BCLC 576, [1995] BCC 1118; *Re Powerstore (Trading) Ltd, Re Homepower Stores Ltd* [1998] 1 All ER 121, [1997] 1 WLR 1280; *Re Mark One (Oxford Street) plc* [1999] 1 All ER 608, [1999] 1 WLR 1445; *Re Wolsey Theatre Co Ltd* [2001] BCC 486; *Re TXU (UK) Ltd* [2002] EWHC 2784 (Ch), [2003] 2 BCLC 341. See also *Re UCT (UK) Ltd (in administration)* [2001] 2 All ER 186, [2001] 1 WLR 436 (payment to preferential creditors who would lose that status on voluntary liquidation when voluntary winding up in interests of creditors generally). Note, however, *Re Designer Room Ltd* [2004] EWHC 720 (Ch), [2004] 3 All ER 679 (distinguishing *Re John Slack Ltd* supra and *Re Mark One (Oxford Street) plc* supra), where the distribution to pre-administration creditors of realised assets was not necessary or incidental to the performance by the administrators of their functions as administrators because it had been proposed solely as the most beneficial means of distributing the assets.

21 Insolvency Act 1986 Sch 1 para 14.

22 Ibid Sch 1 para 15.

23 Ibid Sch 1 para 16. This provision is modified in its application to the administration of building societies: see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 17 (as added and amended); and para 145 ante.

24 Insolvency Act 1986 Sch 1 para 17.

25 Ibid Sch 1 para 18.

26 Ibid Sch 1 para 19. In the case of administration orders relating to limited liability partnerships, this power is expressed as the power to enforce any rights the limited liability partnership has against the members under the terms of the limited liability partnership agreement: see Sch 1 para 19; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'limited liability partnership agreement' see para 997 note 1 post.

27 Insolvency Act 1986 Sch 1 para 20.

28 Ibid Sch 1 para 21.

29 Ibid Sch 1 para 22. This provision is modified in its application to railway administration orders (see the Railways Act 1993 Sch 6 Pt I paras 1, 11, Pt III paras 20-21) and PPP administration orders (see the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 11, Pt III paras 20-21): see para 145 ante.

30 Insolvency Act 1986 Sch 1 para 23.

31 See the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, Schedule para 6(1)-(4) (as originally enacted). See para 145 note 10 ante.

32 Insolvency Act 1986 s 14(2)(a). Where an administration order relates to a limited liability partnership, s 14(2)(a) instead empowers the administrator to prevent any person from taking part in the management of the business of the limited liability partnership and to appoint any person to be a manager of that business (see s 14(2)(a); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3; and para 1306 post); and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) apply for those purposes as they apply for the purposes of s 92 (see para 980 post) (see s 14(2); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3).

33 As to the meaning of 'member' see para 72 note 9 ante.

34 Insolvency Act 1986 s 14(2)(b). As to creditors' meetings see para 190 et seq post; and as to meetings of members see para 196 post.

35 For the meaning of 'the court' see para 4 ante.

36 Insolvency Act 1986 s 14(3). As to the making of applications see para 1055 et seq post. The power to give directions may be exercised only in respect of present administrators, not future liquidators: *Re Powerstore (Trading) Ltd*, *Re Homepower Stores Ltd* [1998] 1 All ER 121, [1997] 1 WLR 1280.

37 Insolvency Act 1986 s 14(4).

38 See *ibid* s 14(5); and para 159 ante.

39 *Ibid* s 14(6).

40 See para 72 ante.

41 See the Insolvency Act 1986 Sch 1 para 21; and para 450 et seq post. The court has no power to make a winding-up order on an application to the court by the administrator for directions: *Re Brooke Marine Ltd* [1988] BCLC 546; *Re Synthetic Technology Ltd* [1990] BCLC 378. As to the power of the court to appoint the administrator as liquidator of the company on the making of a winding-up order see para 558 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

163 General powers of administrator

NOTE 3--Railways Act 1993 Sch 6 paras 1, 4; Greater London Authority Act 1999 Sch 14 paras 1, 4 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

NOTE 10--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

NOTE 36--See also *Re Lune Metal Products Ltd (in administration)* [2006] EWCA Civ 1720, [2007] Bus LR 589 (no jurisdiction under 1986 Act s 14(3)).

TEXT AND NOTES 37--Insolvency Act 1986 s 14(4) (as it has effect by virtue of the Enterprise Act 2002 s 249) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(iii) Administrators/B. DUTIES AND POWERS IN GENERAL/164. Administrator's power to deal with charged property etc.

164. Administrator's power to deal with charged property etc.

The administrator of a company may dispose of or otherwise exercise his powers in relation to any property¹ of the company which is subject to a floating charge² as if the property were not subject to the security³; and, where property is so disposed of, the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security⁴.

Where, on an application by the administrator, the court is satisfied that the disposal, with or without other assets, of any property of the company subject to any other security or any goods in the possession of the company under a hire-purchase agreement⁵, conditional sale agreement⁶, chattel leasing agreement⁷, or retention of title agreement⁸ would be likely to promote the purpose or one or more of the purposes specified in the administration order⁹, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under any such agreement were vested in the company¹⁰. Where the administrator so applies to the court for authority to dispose of such property, the court must fix a venue¹¹ for the hearing of the application, and the administrator must forthwith give notice¹² of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement¹³.

It must be a condition of any such order that the net proceeds of the disposal, and, where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency, must be applied towards discharging the sums secured by the security or payable under the agreement¹⁴. Where a condition so imposed relates to two or more securities, the condition requires that the net proceeds of the disposal and, if applicable, the other sums referred to above, be applied towards discharging the sums secured by those securities in the order of their priorities¹⁵.

If such an order is made, the administrator must forthwith give notice of it to the holder of the security or, as the case may be, the owner under the agreement¹⁶. The court must send two sealed copies of the order to the administrator, who must send one of them to that person or owner¹⁷. An office copy of the order must, within 14 days after the making of the order, be sent by the administrator to the registrar of companies¹⁸. If the administrator without reasonable excuse fails to comply with this provision, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum¹⁹.

1 As to the meaning of 'property' see para 489 note 8 post.

2 The Insolvency Act 1986 s 15(1) applies to any security which, as created, was a floating charge; and s 15(2) (see the text and notes 5-10 infra) applies to any other security: s 15(3). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 15 is modified in its application to special administration regimes: see the Water Industry Act 1991 Sch 3 Pt I paras 1, 5, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 5, Pt II paras 12, 16, Pt III paras 20-21 (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 7, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14

Pt I paras 1, 5, Pt II paras 12, 16, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 18 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

For the distinction between fixed and floating charges see *Re Atlantic Computer Systems plc* [1992] Ch 505, [1992] 1 All ER 476, CA; *Re Atlantic Medical Ltd* [1993] BCLC 386, [1992] BCC 653; *Re CCG International Enterprises Ltd* [1993] BCLC 1428, [1993] BCC 580; *William Gaskell Group Ltd v Highley (Nos 1, 2, 3)* [1994] 1 BCLC 197, [1993] BCC 200; *Re New Bullas Trading Ltd* [1994] 1 BCLC 485, [1994] BCC 36, CA. For the meaning of 'security' see para 109 note 10 ante. See also *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA; *Exchange Travel Agency Ltd v Triton Property Trust plc* [1991] BCLC 396, [1991] BCC 341. Whether a charge is fixed or floating is a question of substance and not merely one of construction: *Re Cosslett (Contractors) Ltd* [1998] Ch 495, at 510 per Millett LJ; *Agnew v IRC* [2001] UKPC 28, [2001] 2 AC 710. See *Re Spectrum Plus Ltd* [2004] EWCA Civ 670, [2004] 3 WLR 503. As to the distinction between a floating charge and a possessory lien see *Re Hamlet International plc (in administration)*, *Trident International Ltd v Barlow* [1999] 2 BCLC 506, CA.

3 Insolvency Act 1986 s 15(1).

4 Ibid s 15(4). As to the priority over property subject to a floating charge afforded to sums payable in respect of debts or liabilities incurred under contracts entered into or contracts of employment adopted by the administrator and to the administrator's remuneration and any expenses properly incurred by him see s 19(4)-(6) (as amended); and para 185 post.

5 As to the meaning of 'hire-purchase agreement' see para 149 note 8 ante.

6 As to the meaning of 'conditional sale agreement' see para 149 note 9 ante.

7 As to chattel leasing agreements see PERSONAL PROPERTY vol 35 (Reissue) para 1228.

8 As to retention of title agreements see COMPANIES vol 15 (2009) PARA 1285.

9 See para 147 ante. See also *Re ARV Aviation Ltd* [1989] BCLC 664, 4 BCC 708.

10 Insolvency Act 1986 s 15(2), (9). As to the making of applications see para 1055 et seq post.

11 For the meaning of 'venue' see para 91 note 7 ante.

12 As to the mode of giving notice see para 1088 post.

13 Insolvency Rules 1986, SI 1986/1925, r 2.51(1), (2) (as originally enacted). See para 145 note 10 ante.

14 Insolvency Act 1986 s 15(5). As to the amounts recoverable by a secured creditor see *Re ARV Aviation Ltd* [1989] BCLC 664, 4 BCC 708. The court may order an inquiry into the open market value of the property where there is a dispute between the administrator and the secured creditor or the owner of the goods in question: *Re ARV Aviation Ltd* supra. If the administrator wishes to challenge the validity of the underlying security, separate proceedings must be commenced; and an order cannot be made under the Insolvency Act 1986 s 15: *Re Newman Shopfitters (Cleveland) Ltd* [1991] BCLC 407. See *Arthur D Little Ltd (in administration) v Ableco Finance LLC* [2002] EWHC 701 (Ch), [2003] Ch 217, in which the court dealt with the issue of the validity of the charge urgently under CPR Pt 8.

15 Insolvency Act 1986 s 15(6).

16 Insolvency Rules 1986, SI 1986/1925, r 2.51(3) (as originally enacted).

17 Ibid r 2.51(4) (as originally enacted).

18 Insolvency Act 1986 s 15(7). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed form of notice to the registrar see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 2.18 (as originally enacted).

19 Insolvency Act 1986 ss 15(8), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to the enforcement in other jurisdictions of orders made by a court in England and Wales see generally para 1029 post.

Where property is disposed of under the Insolvency Act 1986 s 15 in its application to Scotland, the administrator must grant to the donee an appropriate document of transfer or conveyance of the property; and that document or, where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration, has the effect of disencumbering the property of, or as the case may be, freeing the property from the security: s 16(1). Where goods in the possession of the company under a hire-purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement are disposed of under s 15 in its application to Scotland, the disposal has the effect of extinguishing, as against the donee, all rights of the owner of the goods under the agreement: s 16(2).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

164 Administrator's power to deal with charged property etc

NOTE 2--Railways Act 1993 Sch 6 para 1 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941. *Spectrum*, cited, reversed: [2005] UKHL 41, [2005] 4 All ER 209.

TEXT AND NOTE 18--Insolvency Act 1986 s 15(7) (as it has effect by virtue of the Enterprise Act 2002 s 249) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/165. Power to ensure continuation of essential supplies by utilities.

165. Power to ensure continuation of essential supplies by utilities.

Where an administration order is made in relation to a company and a request is made by or with the concurrence of the administrator for the giving after the effective date¹ of:

- 291 (1) a supply of gas by a gas supplier²;
- 292 (2) a supply of electricity by an electricity supplier³;
- 293 (3) a supply of water by a water undertaker⁴; or
- 294 (4) a supply of communications services⁵ by a provider of a public electronic communications service⁶,

the supplier:

- 295 (a) may make it a condition of the giving of the supply that the administrator personally guarantees the payment of any charges in respect of that supply⁷; but
- 296 (b) must not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid⁸.

No such power to ensure the continuation of supplies by a trader, other than the utilities described above, exists, subject to the terms of the underlying supply contract⁹.

1 For these purposes, 'the effective date' is the date on which the administration order was made: Insolvency Act 1986 s 233(4)(a) (s 233 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). The Insolvency Act 1986 s 233 (as amended) is modified in its application to insolvency proceedings involving limited liability partnerships: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Insolvency Act 1986 s 233(3)(a) (substituted by the Gas Act 1995 s 16(1), Sch 4 para 14(1)).

3 Insolvency Act 1986 s 233(3)(b) (substituted by the Utilities Act 2000 s 108, Sch 6 para 47(1), (2)(a)).

4 Insolvency Act 1986 s 233(3)(c) (amended by the Water Act 1989 s 190(1), Sch 25 para 78(1)).

5 'Communications services' do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003: see TELECOMMUNICATIONS vol 97 (2010) PARA 60): Insolvency Act 1986 s 233(5)(d) (substituted by the Communications Act 2003 s 406(1), Sch 17 para 82(1), (2)(b)).

6 Insolvency Act 1986 s 233(3)(d) (substituted by the Communications Act 2003 Sch 17 para 82(1), (2)(a)).

7 Insolvency Act 1986 s 233(2)(a).

8 Ibid s 233(2)(b).

9 See *Leyland DAF Ltd v Automotive Products Ltd* [1994] 1 BCLC 245 at 250, [1993] BCC 389 at 392 per Nicholls VC (supply of components).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/166. Disqualification of directors; duty to report.

166. Disqualification of directors; duty to report.

Where it appears to the administrator that the conditions imposing a duty on the court to disqualify unfit directors of insolvent companies are satisfied¹, the administrator is under a duty to report the matter to the Secretary of State².

The Secretary of State or the official receiver may require the administrator to furnish him with such information with respect to any person's conduct as a director of the company and to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director as the Secretary of State or the official receiver may reasonably require³.

1 le the conditions contained in the Company Directors Disqualification Act 1986 s 6(1): see para 1121 post.

2 See *ibid* s 7(3)(c) (applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the duty to report see para 1127 post. As to the Secretary of State see para 11 note 10 ante.

3 See the Company Directors Disqualification Act 1986 s 7(4); and para 1127 post. As to the official receiver see para 503 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/167. Powers to get in the company's property and obtain information.

167. Powers to get in the company's property and obtain information.

The provisions dealing with the getting in of the company's property¹, the duty of certain persons to co-operate in giving information relating to the company's affairs² and the powers of the court to summon persons before it to give information about the company's affairs³ which apply where the company has gone into liquidation apply also where an administration order has been made in relation to the company.

1 See the Insolvency Act 1986 s 234 (ss 234-235 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante); and para 675 post.

2 See *ibid* s 235; and para 678 post.

3 See *ibid* ss 236, 237; and paras 679-687 post. The court will prevent a creditor from procuring a private examination via the administrator for its own benefit: *Re James McHale Automobiles Ltd* [1997] 1 BCLC 273, [1997] BCC 202.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/B. DUTIES AND POWERS IN GENERAL/168. Adjustment of prior and other transactions.

168. Adjustment of prior and other transactions.

The provisions relating to the adjustment of prior and other transactions¹ and, in particular, to transactions at an undervalue, preferences², extortionate credit transactions³, avoidance of certain floating charges⁴ and unenforceability of liens on books⁵ which apply when a company has gone into liquidation apply also where an administration order has been made in relation to a company. The administrator also has power to apply to the court for an order in relation to transactions defrauding creditors⁶.

1 See the Insolvency Act 1986 ss 238-246 (as amended) (ss 238, 240, 241, 244-246, 424 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante); and para 843 et seq post.

2 As to transactions at an undervalue and preferences see the Insolvency Act 1986 ss 238-241 (as amended); and para 843 et seq post. As to transactions entered into before 29 December 1986 see para 434 note 3 post.

3 See *ibid* s 244; and paras 857-860 post.

4 See *ibid* s 245; and paras 861-866 post.

5 See *ibid* s 246; and para 676 post.

6 *Ibid* s 424(1)(a) (as originally enacted). As to transactions defrauding creditors see para 853 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/C. STATEMENT OF AFFAIRS/169. Requirement for statement of affairs to be submitted to administrator.

C. STATEMENT OF AFFAIRS

169. Requirement for statement of affairs to be submitted to administrator.

Where an administration order has been made, the administrator must forthwith require some or all of the following persons to make out and submit to him a statement in the prescribed form as to the affairs of the company¹.

Those persons are:

- 297 (1) those who are or have been officers² of the company³;
- 298 (2) those who have taken part in the company's formation at any time within one year of the date of the administration order⁴;
- 299 (3) those who are in the company's employment⁵ or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required⁶;
- 300 (4) those who are or have been within that year officers of or in the employment of a company which is or, within that year was, an officer of the company⁷.

The statement must be verified by affidavit by the person required to submit it and must show:

- 301 (a) particulars of the company's assets, debts and liabilities⁸;
- 302 (b) the names and addresses of its creditors⁹;
- 303 (c) the securities¹⁰ held by them respectively¹¹;
- 304 (d) the dates when the securities were respectively given¹²; and
- 305 (e) such further or other information as may be prescribed¹³.

Where any person is so required to submit a statement of affairs to the administrator, he must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to him¹⁴ by the administrator¹⁵. However, if he thinks fit, the administrator may at any time release a person from an obligation imposed on him under these provisions, or, either when giving notice requiring a person to submit a statement of affairs or subsequently, extend the period within which the statement of affairs must be submitted; and, where the administrator has refused to exercise such a power, the court, if it thinks fit, may exercise it¹⁶.

If a person without reasonable excuse fails to comply with any obligation imposed under these provisions, he is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum¹⁷.

¹ Insolvency Act 1986 s 22(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. Section 22(1) is modified in its application to certain special administration regimes: see the Railways Act 1993 Sch 6 Pt II paras 12, 18, Pt III paras 20-21 (railway administration orders) and the Greater London Authority Act 1999 Sch 14 Pt II paras 12, 18, Pt III paras 20-21 (public-private partnership companies).

As to the notice requiring a statement of affairs see para 170 post; and as to the prescribed form of statement of affairs see para 171 post.

2 For the meaning of 'officer' see para 690 post.

3 Insolvency Act 1986 s 22(3)(a).

4 Ibid s 22(3)(b).

5 For these purposes, 'employment' includes employment under a contract for services: ibid s 22(3).

6 Ibid s 22(3)(c).

7 Ibid s 22(3)(d).

8 Ibid s 22(2)(a).

9 Ibid s 22(2)(b).

10 For the meaning of 'security' see para 109 note 10 ante.

11 Insolvency Act 1986 s 22(2)(c).

12 Ibid s 22(2)(d).

13 Ibid s 22(2)(e). See further para 171 post.

14 See para 170 post.

15 Insolvency Act 1986 s 22(4).

16 Ibid s 22(5). See further para 172 post.

17 Ibid ss 22(6), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to orders enforcing compliance with obligations to submit a statement of affairs see para 1026 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/C. STATEMENT OF AFFAIRS/170. Notice requiring statement of affairs.

170. Notice requiring statement of affairs.

Where the administrator determines to require a statement of the company's affairs to be made out and submitted to him¹, he must send notice to each of the persons² whom he considers should be made responsible for submitting the statement, requiring them to prepare and submit the statement³.

The notice must inform each of the deponents⁴:

- 306 (1) of the names and addresses of all others, if any, to whom the same notice has been sent⁵;
- 307 (2) of the time within which the statement must be delivered⁶;
- 308 (3) of the penalty for non-compliance⁷; and
- 309 (4) of the application to him, and to each of the other deponents, of their duty⁸ to provide information, and to attend on the administrator if required⁹.

The administrator must, on request, furnish each deponent with the forms required for the preparation of the statement of affairs¹⁰.

1 Ie in accordance with the Insolvency Act 1986 s 22: see para 169 ante.

2 As to the persons who may be required to submit a statement of affairs see para 169 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.11(1) (amended by SI 1987/1919). See para 145 note 10 ante). For the prescribed form of notice see the Insolvency Rules 1986, SI 1986/1925, rr 2.11, 12.7, Sch 4 Form 2.8 (substituted by SI 1987/1919).

4 The persons to whom notice under the Insolvency Rules 1986, SI 1986/1925, r 2.11(1) (as amended) is sent are referred to in rr 2.11-2.17 (see the text and notes 5-10 infra; and para 171 et seq post) as 'the deponents': r 2.11(2) (as originally enacted).

5 Ibid r 2.11(3)(a) (as originally enacted).

6 Ibid r 2.11(3)(b) (as originally enacted).

7 Ibid r 2.11(3)(c) (as originally enacted). References in the text to the penalty for non-compliance are references to the effect of the Insolvency Act 1986 s 22(6): see para 169 ante.

8 Ie under ibid s 235: see para 678 post.

9 Insolvency Rules 1986, SI 1986/1925, r 2.11(3)(d) (as originally enacted).

10 Ibid r 2.11(4) (amended by SI 1987/1919). For the prescribed form of statement of affairs see para 171 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/C. STATEMENT OF AFFAIRS/171. Form of statement of affairs; verification and filing.

171. Form of statement of affairs; verification and filing.

The statement of affairs must be in the prescribed form¹, must contain all the particulars required by that form and must be verified by affidavit by the deponents², using the same form³; and the administrator may require any of the persons who may be required to submit a statement of affairs⁴ to submit an affidavit of concurrence, stating that he concurs in the statement of affairs⁵. An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it⁶.

The statement of affairs must be delivered to the administrator by the deponent making the affidavit of verification, or by one of them, if more than one, together with a copy of the verified statement⁷; and every affidavit of concurrence must be delivered by the person who makes it, together with a copy⁸. The administrator must file the verified copy of the statement, and the affidavits of concurrence, if any, in court⁹.

1 For the prescribed form of statement of affairs see the Insolvency Rules 1986, SI 1986/1925, rr 2.12, 12.7, Sch 4 Form 2.9 (as originally enacted). See para 145 note 10 ante.

2 For the meaning of 'deponent' see para 170 note 4 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.12(1) (as originally enacted).

4 I.e. those persons mentioned in the Insolvency Act 1986 s 22(3): see para 169 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.12(2) (as originally enacted).

6 Ibid r 2.12(3) (as originally enacted).

7 Ibid r 2.12(4) (as originally enacted).

8 Ibid r 2.12(5) (as originally enacted).

9 Ibid r 2.12(6) (as originally enacted). For the meaning of 'file in court' see para 129 note 3 ante. As to limited disclosure of the statement of affairs see para 172 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/C. STATEMENT OF AFFAIRS/172. Limited disclosure of statement of affairs.

172. Limited disclosure of statement of affairs.

Where the administrator thinks that it would prejudice the conduct of the administration for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it¹. The court may, on the application, order that the statement or, as the case may be, the specified part of it, be not filed in court, or that it is to be filed separately and not to be open to inspection otherwise than with leave of the court²; and the court's order may include directions as to the delivery of documents to the registrar of companies³ and the disclosure of relevant information to other persons⁴.

1 Insolventcy Rules 1986, SI 1986/1925, r 2.13(1) (as originally enacted). See para 145 note 10 ante. As to the making of applications see para 1055 et seq post.

2 Ibid r 2.13(2) (as originally enacted).

3 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 Insolventcy Rules 1986, SI 1986/1925, r 2.13(3) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/C. STATEMENT OF AFFAIRS/173. Release from duty to submit statement of affairs; extension of time.

173. Release from duty to submit statement of affairs; extension of time.

The power of the administrator¹ to give a release from the obligation to submit a statement of affairs, or to grant an extension of time, may be exercised at the administrator's own discretion, or at the request of any deponent²; and a deponent may, if he requests a release or extension of time and it is refused by the administrator, apply to the court for it³. The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it must not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice; but, if the application is not so dismissed, the court must fix a venue⁴ for it to be heard, and give notice to the deponent accordingly⁵.

The deponent must, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he, the deponent, intends to adduce in support of it⁶. The administrator may appear and be heard on the application; and, whether or not he appears, he may file a written report⁷ of any matters which he considers ought to be drawn to the court's attention; and, if such a report is filed, a copy of it must be sent by the administrator to the deponent, not later than five days before the hearing⁸.

Sealed copies of any order made on the application must be sent by the court to the deponent and the administrator⁹.

On any such application the applicant's costs must be paid in any event by him and, unless the court otherwise orders, no allowance towards them may be made out of the assets¹⁰.

1 Ie under the Insolvency Act 1986 s 22(5): see para 169 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.14(1) (as originally enacted). See para 145 note 10 ante. For the meaning of 'deponent' see para 170 note 4 ante.

3 Ibid r 2.14(2) (as originally enacted). As to the making of applications see para 1055 et seq post.

4 For the meaning of 'venue' see para 91 note 7 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.14(3) (as originally enacted).

6 Ibid r 2.14(4) (as originally enacted).

7 As to the use of reports see para 1080 post.

8 Insolvency Rules 1986, SI 1986/1925, r 2.14(5) (as originally enacted).

9 Ibid r 2.14(6) (as originally enacted).

10 Ibid r 2.14(7) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/C. STATEMENT OF AFFAIRS/174. Expenses of statement of affairs.

174. Expenses of statement of affairs.

A deponent¹ making the statement of affairs and affidavit must be allowed, and paid by the administrator out of his receipts, any expenses incurred by the deponent in so doing which the administrator considers reasonable²; and any such decision by the administrator is subject to appeal to the court³. However, nothing in these provisions relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or with respect to the provision of information to the administrator⁴.

1 For the meaning of 'deponent' see para 170 note 4 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.15(1) (as originally enacted). See para 145 note 10 ante.

3 Ibid r 2.15(2) (as originally enacted). As to the procedure for making an appeal see para 1030 et seq post.

4 Ibid r 2.15(3) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5.

ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/
(iii) Administrators/D. ADMINISTRATOR'S PROPOSALS/175. Statement of proposals.

D. ADMINISTRATOR'S PROPOSALS

175. Statement of proposals.

Where an administration order has been made, the administrator must, within three months, or such longer period as the court may allow, after the making of the order¹:

- 310 (1) send to the registrar of companies and, so far as he is aware of their addresses, to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order²; and
- 311 (2) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice³.

The administrator must also, within three months, or such longer period as the court may allow, after the making of the order, either:

- 312 (a) send a copy of the statement, so far as he is aware of their addresses, to all members⁴ of the company⁵; or
- 313 (b) publish in the prescribed manner⁶ a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge⁷.

If the administrator without reasonable excuse fails to comply with these provisions, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁸.

1 The administrator should keep the creditors informed as to what he is proposing to do in view of the suspension of their rights on the making of an administration order (see para 157 ante); and he should as soon as possible send the statement of proposals to the persons referred to in the text; the requirement is for the statement of proposals to be sent within, and not at the expiry of, three months: *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408; *Re Consumer and Industrial Press Ltd (No 2)* (1988) 4 BCC 72; *Re CE King Ltd* [2000] 2 BCLC 297. Although the company that is the subject of an administration order has standing to apply for an extension of the period of three months, it is preferable if the application is made by the administrator: *Re Newport County Association Football Club Ltd* [1987] BCLC 582, 3 BCC 635. See also *Re NS Distribution Ltd* [1990] BCLC 169 (where an extension of the three-month period was granted on the grounds that it was insufficient time in a case of such complexity for the administrator to be able to formulate proper and workable proposals).

2 Insolvency Act 1986 s 23(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. Where an administration petition is presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see para 147 notes 14-15 ante), or where the administration relates to insurers, notice must also be given to the Financial Services Authority: see the Insolvency Act 1986 s 23(1)(a); the Banks (Administration Proceedings) Order 1989, SI 1989/1276, art 2, Schedule para 6 (amended by SI 1998/1129); and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 3 (as originally enacted). See para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 4, 6 et seq.

For the prescribed form of statement of the administrator's proposals to be sent to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 2.21 (as originally enacted). See para 145 note 10 ante. As to the statement to be annexed to the proposals see para 176 post. As to the position where an administrator intends to apply to the court for the administration order to be discharged before he has sent a statement of his proposals to creditors in accordance with the Insolvency Act 1986 s 23(1) see para 162 ante.

The Insolvency Act 1986 s 23 is modified in its application to special administration regimes (see para 145 ante): see the Water Industry Act 1991 Sch 3 Pt I paras 1, 9, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 9, Pt III paras 20-21 (as amended) (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 11, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 9, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 21 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

3 Insolvency Act 1986 s 23(1)(b). A creditors' meeting under s 23(1) is not permissible simply to consider a report of what has happened on a proposal by the administrator that the company should petition for winding up; this is not one of the purposes in s 8 (see para 147 ante): *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408. As to the creditors' meeting to consider the administrator's proposals see para 177 post; and as to meetings of creditors generally see para 190 et seq post.

4 As to the meaning of 'member' see para 72 note 9 ante.

5 Insolvency Act 1986 s 23(2)(a).

6 The prescribed manner of publishing such notice is by gazetting; and the notice must also be advertised once in the newspaper in which the administration order was advertised: Insolvency Rules 1986, SI 1986/1925, r 2.17(a) (as originally enacted). As to the Gazette, and the gazetting of notices, see para 1048 post.

7 Insolvency Act 1986 s 23(2)(b).

8 Ibid ss 23(3), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

175 Statement of proposals

NOTE 2--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107. Railways Act 1993 Sch 6 paras 1, 9; Greater London Authority Act 1999 Sch 14 paras 1, 9 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/D. ADMINISTRATOR'S PROPOSALS/176. Statement to be annexed to proposals.

176. Statement to be annexed to proposals.

There must be annexed to the administrator's proposals, when sent to the registrar of companies¹ and laid before the creditors' meeting required to be summoned to consider such proposals, a statement by him showing:

- 314 (1) details relating to his appointment as administrator, the purposes for which an administration order was applied for and made, and any subsequent variation of those purposes²;
- 315 (2) the names of the directors and secretary of the company³;
- 316 (3) an account of the circumstances giving rise to the application for an administration order⁴;
- 317 (4) if a statement of affairs has been submitted, a copy or summary of it, with the administrator's comments, if any⁵;
- 318 (5) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date, which must, unless the court otherwise orders, be a date not earlier than that of the administration order⁶;
- 319 (6) the manner in which the affairs and business of the company have, since the date of the administrator's appointment, been managed and financed, and will, if the administrator's proposals are approved, continue to be managed and financed⁷; and
- 320 (7) such other information, if any, as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals⁸.

1 le under the Insolvency Act 1986 s 23(1): see para 175 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

2 Insolvency Rules 1986, SI 1986/1925, r 2.16(1)(a) (r 2.16(1) renumbered, and r 2.16(1)(f) substituted, by SI 1987/1919). See para 145 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.16(1)(b) (as renumbered: see note 2 supra).

4 Ibid r 2.16(1)(c) (as renumbered: see note 2 supra).

5 Ibid r 2.16(1)(d) (as renumbered: see note 2 supra).

6 Ibid r 2.16(1)(e) (as renumbered: see note 2 supra).

7 Ibid r 2.16(1)(f) (as renumbered and substituted: see note 2 supra).

8 Ibid r 2.16(1)(g) (as renumbered: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5.

ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/

(iii) Administrators/D. ADMINISTRATOR'S PROPOSALS/177. Meeting to consider administrator's proposals.

177. Meeting to consider administrator's proposals.

Notice of the creditors' meeting required to be summoned¹ to consider the administrator's proposals must be given to all the creditors of the company who are identified in the statement of affairs, or are known to the administrator and had claims against the company at the date of the administration order². Unless the court otherwise directs, notice of the meeting must also be given by advertisement in the newspaper in which the administration order was advertised³; and notice to attend the meeting must be sent out at the same time to any directors or officers⁴ of the company, including persons who have been directors or officers in the past, whose presence at the meeting is, in the administrator's opinion, required⁵.

If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and must if a resolution is passed to that effect, adjourn the meeting for not more than 14 days⁶.

1 le under the Insolvency Act 1986 s 23(1): see para 175 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.18(1) (as originally enacted). See para 145 note 10 ante.

3 Ibid r 2.18(2) (as originally enacted).

4 For the meaning of 'officer' see para 690 post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.18(3) (as originally enacted). For the prescribed form of notice to directors and others to attend the meeting of creditors see rr 2.18, 12.7, Sch 4 Form 2.10 (as originally enacted).

6 Ibid r 2.18(4) (as originally enacted). As to consideration of the proposals at the creditors' meeting see para 178 post; and as to the procedure generally at such meetings see para 190 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5.

ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/

(iii) Administrators/D. ADMINISTRATOR'S PROPOSALS/178. Consideration of proposals by creditors' meeting.

178. Consideration of proposals by creditors' meeting.

A meeting of creditors summoned to consider the administrator's proposals¹ must decide whether to approve such proposals²; and the meeting may approve the proposals with modifications³, but must not do so unless the administrator consents to each modification⁴. Subject to these provisions, the meeting must be conducted in accordance with the Insolvency Rules 1986⁵.

After the conclusion of the meeting, the administrator must report the result of the meeting to the court and must give notice of that result to the registrar of companies and to such persons as may be prescribed⁶. If a report is given to the court that the meeting has declined to approve the administrator's proposals, with or without modifications, the court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit⁷.

Where the administration order is discharged, the administrator must, within 14 days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies⁸. If, however, the administrator without reasonable excuse fails to comply with this requirement, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁹.

1 Ie under the Insolvency Act 1986 s 23: see para 175 ante. The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante.

2 Ibid s 24(1).

3 For the meaning of 'modifications' see para 84 note 5 ante.

4 Insolvency Act 1986 s 24(2).

5 Ibid s 24(3). See the Insolvency Rules 1986, SI 1986/1925 (as amended); and paras 177 ante, 190 et seq post.

6 Insolvency Act 1986 s 24(4). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. Where an administration relates to insurers, notice of the result of the meeting must also be given to the Financial Services Authority: see s 23(4); and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 4 (as originally enacted). See para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

For the prescribed form of notice to be given to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 2.23 (as originally enacted). See para 145 note 10 ante. Any report or notice by the administrator of the result of a creditors' meeting held under the Insolvency Act 1986 s 23 or s 25 (see para 179 post) must have annexed to it details of the proposals which were considered by the meeting and of the revisions and modifications to the proposals which were so considered: Insolvency Rules 1986, SI 1986/1925, r 2.29 (substituted by SI 1987/1919).

7 Insolvency Act 1986 s 24(5). The court may direct that the administrator's proposals be put into effect notwithstanding that the creditors have failed to approve them or may vary the purposes specified in the

administration order or appoint a new administrator or administrators: see *Re Maxwell Communication Corp'n plc* [1992] BCLC 465 at 467, [1992] BCC 372 at 374 per Hoffmann J; *Re Structures and Computers Ltd* [1998] 1 BCLC 292. See also *Re Dana (UK) Ltd* [1999] 2 BCLC 239, in which the administrators were authorised to act contrary to their original proposals when it was clear that this change in approach was approved by the overwhelming majority of the company's creditors.

8 Insolvency Act 1986 s 24(6).

9 Ibid ss 24(7), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

178 Consideration of proposals by creditors' meeting

TEXT AND NOTES 1-4--Insolvency Act 1986 s 24(2) (as it has effect by virtue of the Enterprise Act 2002 s 249) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/D. ADMINISTRATOR'S PROPOSALS/179. Approval of substantial revisions.

179. Approval of substantial revisions.

Where proposals have been approved, with or without modifications¹, and the administrator proposes to make revisions of the proposals which appear to him substantial, the administrator must:

- 321 (1) send to all creditors of the company, so far as he is aware of their addresses, a statement in the prescribed form² of his proposed revisions³; and
- 322 (2) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice⁴.

The administrator must not make the proposed revisions unless they are approved by the meeting⁵.

The administrator must either:

- 323 (a) send a copy of the statement to all members⁶ of the company, so far as he is aware of their addresses⁷; or
- 324 (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge⁸.

The meeting of creditors may approve the proposed revisions with modifications, but may not do so unless the administrator consents to each modification⁹. Subject to the above provisions, the meeting must be conducted in accordance with the Insolvency Rules 1986¹⁰. After the conclusion of the meeting, the administrator must give notice of the result of the meeting to the registrar of companies and to such persons as may be prescribed¹¹.

1 le under the Insolvency Act 1986 s 24: see para 178 ante. The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante.

2 For the prescribed form of statement of revised proposals and notice of meeting to consider them see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 2.22 (as originally enacted). See para 145 note 10 ante. As to creditors' meetings generally see para 190 et seq post.

3 Insolvency Act 1986 s 25(1), (2)(a). Where an administration petition is presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see para 147 notes 14-15 ante), or where the administration relates to insurers, statements of proposed revisions must also be given to the Financial Services Authority: see the Insolvency Act 1986 s 25(2)(a); the Banks (Administration Proceedings) Order 1989, SI 1989/1276, art 2, Schedule para 7 (amended by SI 1998/1129); and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, Schedule para 5 (as originally enacted). See para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

Where it is not practicable for the administrator to obtain the assent of a meeting of creditors to a revision of the proposals and the original approved proposals cannot be implemented, the court may authorise the administrator to enter into an alternative scheme: *Re Smallman Construction Ltd* [1989] BCLC 420, 4 BCC 784.

4 Insolvency Act 1986 s 25(2)(b).

5 Ibid s 25(2).

6 As to the meaning of 'member' see para 72 note 9 ante.

7 Insolvency Act 1986 s 25(3)(a).

8 Ibid s 25(3)(b). The prescribed manner of publishing such notice is by gazetting; and the notice must also be advertised once in the newspaper in which the administration order was advertised: Insolvency Rules 1986, SI 1986/1925, r 2.17(b) (as originally enacted). As to the Gazette, and the gazetting of notices, see para 1048 post.

9 Insolvency Act 1986 s 25(4).

10 Ibid s 25(5). See the Insolvency Rules 1986, SI 1986/1925 (as amended); and para 190 et seq post.

11 Insolvency Act 1986 s 25(6). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the documents to be annexed to any notice by the administrator of the result of a creditors' meeting held under s 25 see para 178 ante. For the prescribed form of notice to be given to the registrar see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.23 (as originally enacted). As to the notices to be given to creditors of the result of such meetings see para 180 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

179 Approval of substantial revisions

NOTE 3--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5.
ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/
(iii) Administrators/D. ADMINISTRATOR'S PROPOSALS/180. Notices to creditors.

180. Notices to creditors.

Within 14 days of the conclusion of a meeting of creditors to consider the administrator's proposals or revised proposals, the administrator must send notice of the result of the meeting, including, where appropriate, details of the proposals as approved, to every creditor who received notice of the meeting¹, and to any other creditor of whom the administrator has since become aware².

Within 14 days of the end of every period of six months beginning with the date of approval of the administrator's proposals or revised proposals, the administrator must send to all creditors of the company a report on the progress of the administration³.

On vacating office⁴, the administrator must send to all creditors of the company a report on the administration up to that time⁵.

1 Ie under the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 177 ante.

2 Ibid r 2.30(1) (as originally enacted). See para 145 note 10 ante. For the prescribed form of the report of meeting of creditors see rr 2.30, 12.7, Sch 4 Form 2.12 (as originally enacted).

3 Ibid r 2.30(2) (as originally enacted).

4 See para 185 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.30(3) (as originally enacted). This does not apply where the administration is immediately followed by the company going into liquidation, nor when the administrator is removed from office by the court or ceases to be qualified as an insolvency practitioner: r 2.30(3) (as originally enacted). See further para 185 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/E. ADMINISTRATOR'S REMUNERATION/181. Fixing of remuneration.

E. ADMINISTRATOR'S REMUNERATION

181. Fixing of remuneration.

The administrator is entitled to receive remuneration for his services as such¹; and the remuneration must be fixed either:

- 325 (1) as a percentage of the value of the property with which he has to deal²; or
- 326 (2) by reference to the time properly given by the insolvency practitioner, as administrator, and his staff in attending to matters arising in the administration³.

It is for the creditors' committee⁴, if there is one, to determine whether the remuneration is to be fixed under head (1) or head (2) above and, if under head (1) above, to determine any percentage to be applied⁵. In arriving at that determination, the committee must have regard to:

- 327 (a) the complexity, or otherwise, of the case⁶;
- 328 (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree⁷;
- 329 (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such⁸; and
- 330 (d) the value and nature of the property with which he has to deal⁹.

If, however, there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed¹⁰ by a resolution of a meeting of creditors¹¹.

If not fixed as mentioned above, the administrator's remuneration must, on his application, be fixed by the court¹².

Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned; and any dispute arising between them may be referred to the court, for settlement by order, or to the creditors' committee or a meeting of creditors, for settlement by resolution¹³. If the administrator is a solicitor¹⁴ and employs his own firm, or any partner in it, to act on behalf of the company, profit costs must not be paid unless this is authorised by the creditors' committee, the creditors or the court¹⁵.

1 Insolvency Rules 1986, SI 1986/1925, r 2.47(1) (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.47(2)(a) (as originally enacted).

3 Ibid r 2.47(2)(b) (as originally enacted).

4 As to the creditors' committee see para 197 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.47(3) (as originally enacted).

6 Ibid r 2.47(4)(a) (as originally enacted).

- 7 Ibid r 2.47(4)(b) (as originally enacted).
- 8 Ibid r 2.47(4)(c) (as originally enacted).
- 9 Ibid r 2.47(4)(d) (as originally enacted).
- 10 Ie in accordance with ibid r 2.47(2) (as originally enacted): see the text and notes 1-3 supra.
- 11 Ibid r 2.47(5) (as originally enacted). In such a case r 2.47(4) (see the text and notes 6-9 supra) applies to the creditors as it does to the creditors' committee: r 2.47(5) (as originally enacted).
- 12 Ibid r 2.47(6) (as originally enacted). See also *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408; *Re Brooke Marine Ltd* [1988] BCLC 546; *Re Sheridan Securities Ltd* (1988) 4 BCC 200 (remuneration to be determined in the way receivers and other court officers have remuneration fixed).
- 13 Insolvency Rules 1986, SI 1986/1925, r 2.47(7) (substituted by SI 1987/1919).
- 14 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.
- 15 Insolvency Rules 1986, SI 1986/1925, r 2.47(8) (added by SI 1987/1919).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

181 Fixing of remuneration

NOTE 14--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/E. ADMINISTRATOR'S REMUNERATION/182. Recourse to meeting of creditors and to the court.

182. Recourse to meeting of creditors and to the court.

If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors¹.

If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate². The administrator must give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application³. If there is no creditors' committee, the administrator's notice of his application must be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented⁴. The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration⁵.

1 Insolventy Rules 1986, SI 1986/1925, r 2.48 (as originally enacted). See para 145 note 10 ante. As to the creditors' committee see para 197 et seq post. As to the fixing of remuneration by the creditors' committee see para 181 ante.

2 Ibid r 2.49(1) (as originally enacted).

3 Ibid r 2.49(2) (as originally enacted).

4 Ibid r 2.49(3) (as originally enacted).

5 Ibid r 2.49(4) (amended by SI 1987/1919).

UPDATE

145-379 Administration

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/E. ADMINISTRATOR'S REMUNERATION/183. Creditors' claim that remuneration is excessive.

183. Creditors' claim that remuneration is excessive.

Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors, including himself, apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive¹. The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it must not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice². If the application is not so dismissed, the court must fix a venue³ for it to be heard, and give notice to the applicant accordingly⁴; and the applicant must, at least 14 days before that hearing, send to the administrator a notice stating the venue, accompanied by a copy of the application and of any evidence which the applicant intends to adduce in support of it⁵.

If the court considers the application to be well-founded, it must make an order fixing the remuneration at a reduced amount or rate⁶; and, unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable as an expense of the administration⁷.

1 Insolvent Rules 1986, SI 1986/1925, r 2.50(1) (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.50(2) (as originally enacted).

3 For the meaning of 'venue' see para 91 note 7 ante.

4 Insolvent Rules 1986, SI 1986/1925, r 2.50(2) (as originally enacted).

5 Ibid r 2.50(3) (as originally enacted).

6 Ibid r 2.50(4) (as originally enacted). The court is unlikely to interfere with the administrator's remuneration when previously fixed by the creditors unless the remuneration can be seen to be clearly excessive: cf *Re Potters Oils Ltd (No 2)* [1986] 1 All ER 890, sub nom *Re Potters Oils Ltd* [1986] 1 WLR 201.

7 Insolvent Rules 1986, SI 1986/1925, r 2.50(5) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/F. ACCOUNTS/184. Abstract of receipts and payments.

F. ACCOUNTS

184. Abstract of receipts and payments.

The administrator must:

- 331 (1) within two months after the end of six months from the date of his appointment, and every subsequent period of six months; and
- 332 (2) within two months after he ceases to act as administrator¹,

send to the court, and to the registrar of companies, and to each member of the creditors' committee, the requisite accounts of the receipts and payments of the company².

The court may, on the administrator's application, extend the two month period referred to above³.

The accounts are to be in the form of an abstract showing:

- 333 (a) receipts and payments during the relevant period of six months⁴; or
- 334 (b) where the administrator has ceased to act, receipts and payments during the period from the end of the last six-month period to the time when he so ceased or, alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as administrator⁵.

If the administrator makes default in complying with these provisions, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁵.

1 As to vacation of office by the administrator see para 185 et seq post.

2 Insolvency Rules 1986, SI 1986/1925, r 2.52(1) (as originally enacted). See para 145 note 10 ante. For the prescribed form of the administrator's abstract of receipts and payments see rr 2.52, 12.7, Sch 4 Form 2.15 (as originally enacted). As to the records to be kept by all insolvency practitioners see para 42 et seq ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the creditors' committee see para 197 et seq post.

3 Ibid r 2.52(2) (as originally enacted).

4 Ibid r 2.52(3)(a) (as originally enacted).

5 Ibid r 2.52(3)(b) (as originally enacted).

5 Ibid rr 2.52(4), 12.21, Sch 5 (as originally enacted). The Insolvency Act 1986 s 431 (as amended) (summary proceedings: see para 927 post) has effect in relation to such an offence as it does in relation to offences under that Act: Insolvency Rules 1986, SI 1986/1925, r 12.21(5). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/G. RESIGNATION, REMOVAL OR VACANCY IN OFFICE OF ADMINISTRATOR; RELEASE OF ADMINISTRATOR/185. Vacation of office.

G. RESIGNATION, REMOVAL OR VACANCY IN OFFICE OF ADMINISTRATOR; RELEASE OF ADMINISTRATOR

185. Vacation of office.

The administrator of a company may at any time be removed from office by order of the court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court¹.

The administrator must vacate office if he ceases to be qualified as an insolvency practitioner in relation to the company², or if the administration order is discharged³.

Where at any time a person ceases to be administrator:

- 335 (1) his remuneration⁴ and any expenses properly incurred by him are a charge on and must be paid out of any property⁵ of the company which is in his custody or under his control at that time in priority to any floating charge then existing over the property of the company⁶;
- 336 (2) any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into by him or a predecessor of his in the carrying out of his or the predecessor's functions must be charged on and paid out of any property as is mentioned in head (1) above in priority to any charge arising under head (1) above⁷; and
- 337 (3) all sums payable in respect of liabilities incurred, while he was administrator, on or after 15 March 1994⁸ under contracts of employment adopted⁹ by him or a predecessor of his in the carrying out of his or the predecessor's functions are, to the extent that the liabilities are qualifying liabilities¹⁰, to be charged on and paid out of any such property as is mentioned in head (1) above and enjoy the same priority as any sums to which head (2) above applies¹¹.

1 Insolvency Act 1986 s 19(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the prescribed circumstances in which an administrator may resign his office see para 186 post. As to the court's inherent jurisdiction to remove and replace an administrator see *Clements v Udal* [2002] 2 BCLC 606.

2 Insolvency Act 1986 s 19(2)(a). As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Ibid s 19(2)(b).

4 As to the administrator's remuneration see para 181 et seq ante.

5 As to the meaning of 'property' see para 489 note 8 post.

6 Insolvency Act 1986 s 19(3), (4) (s 19(3), (5) amended, and s 19(6)-(10) added, by the Insolvency Act 1994 ss 1, 5(2), Sch 2). The priority referred to in the text is priority over any security to which the Insolvency Act 1986 s 15(1) applies: see para 164 ante. Where an administration order is discharged upon the making of a winding-up order, the company's property remains charged in the hands of the official receiver or liquidator: *Re Sheridan Securities Ltd* (1988) 4 BCC 200. See also *Re Exchange Travel (Holdings) Ltd* [1993] BCLC 887, [1992] BCC 954.

The Insolvency Act 1986 s 19(4) is modified in its application to special administration regimes (see para 145 ante): see the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 20 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)).

7 Insolvency Act 1986 s 19(5) (as amended: see note 6 supra). In relation to a claim under the Insolvency Act 1986 s 19(5) (as amended), the limitation period starts to run when the administration ends: *Re Maxwell Fleet and Facilities Management Co Ltd (in administration)* [2000] 1 All ER 464, [2001] 1 WLR 323.

8 As to contracts of employment adopted by an administrator before 15 March 1994 see *Powdrill v Watson* [1995] 2 AC 394, [1995] 2 All ER 65, HL (on the true construction of the Insolvency Act 1986 s 19 (as originally enacted), the word 'adopt' connoted some conduct by the administrator which amounted to an election to treat the continued contract of employment with the company as giving rise to a separate liability in the administration; adoption of the contract involved the acceptance or rejection of the contract as a whole and it was not open to the administrator to pick and choose between different liabilities under the contract or to treat only certain liabilities under the contract as liabilities in the administration; it followed that, if the administrator caused the company to continue the employment of an employee for more than 14 days after his appointment, the employee's contract of employment was inevitably adopted for the purposes of the Insolvency Act 1986 and it was not open to the administrator to avoid that result or alter its consequences unilaterally by informing the employees that he was not adopting their contracts or was only doing so on terms; but the consequence of the adoption of contracts of employment was to give priority only to liabilities incurred by the administrator during his tenure of office).

9 For these purposes, the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment: Insolvency Act 1986 s 19(6) (as added: see note 6 supra). As to the duties of an administrator to report to creditors on vacating office see para 180 ante; and as to his duties to prepare accounts of receipts and payments see para 184 ante.

10 For these purposes, a liability under a contract of employment is a qualifying liability if: (1) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme; and (2) it is in respect of services rendered wholly or partly after the adoption of the contract: *ibid* s 19(7) (as added: see note 6 supra). So much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract is disregarded for these purposes: s 19(8) (as so added). Wages or salary payable in respect of a period of holiday (including any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period) or absence from work through sickness or other good cause are deemed to be wages or, as the case may be, salary in respect of services rendered in that period; and a sum payable in lieu of holiday is deemed to be wages or, as the case may be, salary in respect of services rendered in the period by reference to which the holiday entitlement arose: s 19(9), (10) (as so added).

11 *Ibid* s 19(6) (as added: see note 6 supra); Insolvency Act 1994 s 1(7). See *Re A Company (No 005174 of 1999)* [2000] 1 WLR 502 [2000] 1 BCLC 593 (teachers' contracts of employment adopted for summer term involved payment of teachers' salaries during summer vacation); *Re F/L Realisations Ltd* [2001] ICR 424, sub nom *IRC v Lawrence* [2001] 1 BCLC 204, CA (administrators' indebtedness for tax and national insurance contributions arising under adopted contracts of employment enjoyed priority). See also *Re Antal International Ltd* [2003] EWHC 1339 (Ch), [2003] 2 BCLC 406 (on the facts, the continuation of the employment relationship between the administrators and a group of employees after the expiry of the 14-day period was held not to be an election to adopt the contracts when the administrators believed them to be employees of a French subsidiary rather than the company, which turned out not to be the case).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

185 Vacation of office

NOTE 6--Building Societies Act 1986 Sch 15A further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/G. RESIGNATION, REMOVAL OR VACANCY IN OFFICE OF ADMINISTRATOR; RELEASE OF ADMINISTRATOR/186. Resignation of administrator.

186. Resignation of administrator.

The administrator may give notice of his resignation¹ on grounds of ill health, because he intends ceasing to be in practice as an insolvency practitioner², or there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of administrator³. The administrator may also, with the leave of the court, give notice of his resignation on grounds other than these⁴.

The administrator must give at least seven days' notice⁵ of his intention to resign, or to apply for the court's leave to do so, to:

- 338 (1) a continuing administrator of the company (if there is one)⁶;
- 339 (2) the creditors' committee (if there is no continuing administrator)⁷; and
- 340 (3) the company and its creditors (if there is no continuing administrator and no creditors' committee)⁸.

¹ For the prescribed form of notice to the court of the resignation of the administrator see the Insolvency Rules 1986, SI 1986/1925, rr 2.53, 12.7, Sch 4 Form 2.16 (as originally enacted). See para 145 note 10 ante.

² Ibid r 2.53(1)(a) (as originally enacted). As to insolvency practitioners and their qualification see para 8 et seq ante.

³ Ibid r 2.53(1)(b) (as originally enacted). It is not impracticable for an administrator to discharge his duties merely because it is undesirable or inexpedient for him to do so: *Re Alt Landscapes* [1999] BPIR 459 at 461 per Lloyd J.

⁴ Insolvency Rules 1986, SI 1986/1925, r 2.53(2) (as originally enacted). For the prescribed form of notice of resignation of the administrator with leave of the court see rr 2.53, 12.7, Sch 4 Form 2.17 (as originally enacted).

⁵ As to the mode of giving notice see para 1088 post.

⁶ Insolvency Rules 1986, SI 1986/1925, r 2.53(3)(a) (as originally enacted).

⁷ Ibid r 2.53(3)(b) (as originally enacted). As to the creditors' committee see para 197 et seq post.

⁸ Ibid r 2.53(3)(c) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/G. RESIGNATION, REMOVAL OR VACANCY IN OFFICE OF ADMINISTRATOR; RELEASE OF ADMINISTRATOR/187. Death of administrator.

187. Death of administrator.

Where the administrator has died, it is the duty of his personal representatives to give notice¹ of the fact to the court, specifying the date of the death².

If, however, the deceased administrator was a partner in a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or who is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners³; and notice of the death may also be given by any person producing to the court the relevant death certificate or a copy of it⁴.

1 As to the mode of giving notice see para 1088 post.

2 Insolvency Rules 1986, SI 1986/1925, r 2.54(1) (as originally enacted). See para 145 note 10 ante. Rule 2.54(1) (as originally enacted) does not apply if notice has been given under r 2.54(2) (as originally enacted) or r 2.54(3) (as originally enacted) (see the text and notes 3-4 infra): r 2.54(1) (as originally enacted).

3 Ibid r 2.54(2) (as originally enacted). As to insolvency practitioners and their qualification, and as to the recognised bodies referred to in the text, see para 8 et seq ante. As to the Secretary of State see para 11 note 10 ante.

4 Ibid r 2.54(3) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/G. RESIGNATION, REMOVAL OR VACANCY IN OFFICE OF ADMINISTRATOR; RELEASE OF ADMINISTRATOR/188. Appointment of administrator in event of vacancy.

188. Appointment of administrator in event of vacancy.

If a vacancy occurs by death, resignation or otherwise in the office of administrator, the court may by order fill the vacancy¹.

An application for such an order² may be made:

- 341 (1) by any continuing administrator of the company³;
- 342 (2) where there is no administrator, by the creditors' committee⁴;
- 343 (3) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company⁵; or
- 344 (4) in certain circumstances, by the Financial Services Authority⁶.

Where the court makes an order filling a vacancy in the office of administrator, the same provisions apply in respect of giving notice of, and advertising, the order as in the case of the administration order⁷.

1 Insolvency Act 1986 s 13(2). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the appointment of more than one person as administrator see para 158 ante.

2 As to the making of applications see para 1055 et seq post.

3 Insolvency Act 1986 s 13(3)(a). Section 13(3) is modified in its application to special administration regimes (see para 145 ante): see the Water Industry Act 1991 Sch 3 Pt I paras 1, 3, Pt II paras 11-12 (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 3, Pt III paras 20-21 (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 5, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 3, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 15 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

4 Insolvency Act 1986 s 13(3)(b). See note 3 supra. As to the creditors' committee (ie the committee established under s 26) see para 197 et seq post.

5 Ibid s 13(3)(c). See note 3 supra. Where an administration order relating to a limited liability partnership has been made, s 13(3)(c) does not confer power on directors to apply to the court: see s 13(3)(c); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

6 Insolvency Act 1986 s 13(3)(d). This provision is added in relation only to circumstances where an administration petition is presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see para 147 notes 14-15 ante), or where the administration relates to insurers: see the Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 5 (amended by SI 1998/1129); and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, Schedule para 1 (as originally enacted). See para 145 note 10 ante. See also note 3 supra. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

7 Insolvency Rules 1986, SI 1986/1925, r 2.55 (amended by SI 1987/1919). See para 145 note 10 ante. As to the provisions referred to in the text see paras 155, 160 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

188 Appointment of administrator in event of vacancy

NOTE 3--Railways Act 1993 Sch 6 para 1 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941. Railways Act 1993 Sch 6 para 3 amended: Railways Act 2005 Sch 13 Pt 1.

NOTE 6--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iii) Administrators/G. RESIGNATION, REMOVAL OR VACANCY IN OFFICE OF ADMINISTRATOR; RELEASE OF ADMINISTRATOR/189. Release of administrator.

189. Release of administrator.

A person who has ceased to be the administrator of a company has his release, in the case of a person who has died, with effect from the time at which notice is given to the court that he has ceased to hold office in accordance with the rules¹, and, in any other case, with effect from such time as the court may determine².

Where a person has his release under this provision, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator³. The court's powers under the provisions giving rise to a summary remedy against delinquent administrators⁴ are not, however, affected in relation to a person who has had his release⁵; nor is the power of the official receiver to apply to the court for the public examination of the administrator affected where the company is wound up by the court⁶.

1 Insolvency Act 1986 s 20(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. See para 187 ante.

2 Insolvency Act 1986 s 20(1)(b). Where an administration order was discharged upon the making of a winding-up order and it appeared that the administrator had wrongly pursued purposes not specified in the administration order (see para 147 ante), the administrator's release was postponed in order to enable the official receiver and the liquidator to investigate the matter: *Re Sheridan Securities Ltd* (1988) 4 BCC 200. Where owners of goods claimed compensation against an administrator for having wrongfully refused leave to the owner to retake his goods, the court postponed the administrator's release pending determination of the claim: *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1993] 2 All ER 195, [1992] 1 WLR 1253. The court also has power to grant a partial release excluding certain types of claim: *Re Powerstore (Trading) Ltd, Re Homepower Stores Ltd* [1998] 1 All ER 121, [1997] 1 WLR 1280; *Kyrris v Oldham, Royle v Oldham* [2003] EWCA Civ 1506, [2004] 1 BCLC 305.

3 Insolvency Act 1986 s 20(2).

4 *Ie* under *ibid* s 212: see para 688 et seq post.

5 *Ibid* s 20(3).

6 See *ibid* ss 132, 133 and paras 513, 538 et seq post. As to the official receiver see para 503 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

189 Release of administrator

NOTE 3--See *Re Newscreen Media Group (in liquidation); Hardy v McLoughlin* [2009] EWHC 944 (Ch), [2009] 2 BCLC 353; and *Parkinson Engineering Services plc (in liquidation) v Swan* [2009] EWCA Civ 1366, [2010] 1 BCLC 163.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iv) Meetings of Creditors and Members/190. Creditors' meetings generally; proxies; quorum.

(iv) Meetings of Creditors and Members

190. Creditors' meetings generally; proxies; quorum.

The following provisions apply to creditors' meetings¹ which are:

- 345 (1) summoned by the administrator under the general power to summon meetings of creditors²;
- 346 (2) requisitioned by creditors or directed to be held by the court³;
- 347 (3) to consider the administrator's proposals⁴; or
- 348 (4) to consider substantial revisions⁵.

In fixing the venue⁶ for the meeting, the administrator must have regard to the convenience of the creditors⁷. The meeting must be summoned for commencement between 10.00 and 16.00 hours on a business day⁸, unless the court otherwise directs⁹. Notice of the meeting must be given to all creditors who are known to the administrator and had claims against the company at the date of the administration order; and the notice must specify the purpose of the meeting and contain a statement of the effect of the provision¹⁰ dealing with the entitlement to vote¹¹. Except in relation to a meeting summoned to consider the administrator's proposals¹² or to consider substantial revisions to such proposals¹³, at least 21 days' notice of the meeting must be given¹⁴. With the notice summoning the meeting there must be sent out forms of proxy¹⁵. If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following¹⁶. The meeting may from time to time be adjourned, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence¹⁷.

1 Insolventcy Rules 1986, SI 1986/1925, r 2.19(1) (as originally enacted). See para 145 note 10 ante.

2 Ie under the Insolventcy Act 1986 s 14(2)(b) (as originally enacted): see para 163 ante.

3 Ie under ibid s 17(3) (as originally enacted): see para 161 ante. As to such meetings see para 192 post.

4 Ie under ibid s 23(1) (as originally enacted): see para 175 ante.

5 Ie under ibid s 25(2)(b) (as originally enacted): see para 179 ante.

6 For the meaning of 'venue' see para 91 note 7 ante.

7 Insolventcy Rules 1986, SI 1986/1925, r 2.19(2) (as originally enacted).

8 For the meaning of 'business day' see para 113 note 4 ante.

9 Insolventcy Rules 1986, SI 1986/1925, r 2.19(3) (as originally enacted).

10 Ie ibid r 2.22(1) (as originally enacted): see para 193 post.

11 Ibid r 2.19(4) (amended by SI 1987/1919). For the prescribed form of notice of creditors' meetings in administration proceedings see the Insolventcy Rules 1986, SI 1986/1925, rr 2.19, 12.7, Sch 4 Form 2.11 (as originally enacted).

- 12 le under the Insolvency Act 1986 s 23(1): see para 175 ante.
- 13 le under *ibid* s 25(2): see para 179 ante.
- 14 Insolvency Rules 1986, SI 1986/1925, r 2.19(4A) (added by SI 1987/1919).
- 15 Insolvency Rules 1986, SI 1986/1925, r 2.19(5) (as originally enacted). For the prescribed form of proxy see Sch 4 Form 8.2. See further para 193 note 4 post.
- 16 *Ibid* r 2.19(6) (as originally enacted). As to the quorum at such meetings see para 667 post.
- 17 *Ibid* r 2.19(7) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iv) Meetings of Creditors and Members/191. The chairman at meetings.

191. The chairman at meetings.

At any meeting of creditors summoned by the administrator, either he must be chairman, or a person nominated by him in writing to act in his place¹.

A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company², or an employee of the administrator or his firm who is experienced in insolvency matters³.

1 Insolvency Rules 1986, SI 1986/1925, r 2.20(1) (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.20(1)(a) (as originally enacted). As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Ibid r 2.20(1)(b) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iv) Meetings of Creditors and Members/192. Requisitioned meetings.

192. Requisitioned meetings.

Any request by creditors to the administrator for a meeting of creditors to be summoned must be accompanied by:

- 349 (1) a list of the creditors concurring with the request, showing the amounts of their respective claims in the administration¹;
- 350 (2) written confirmation of his concurrence from each creditor concurring²; and
- 351 (3) a statement of the purpose of the proposed meeting³.

The administrator must, if he considers the request to be properly made⁴, fix a venue⁵ for the meeting, not more than 35 days from his receipt of the request, and give at least 21 days' notice of the meeting to creditors⁶.

The expenses of summoning and holding a meeting at the instance of any person other than the administrator must be paid by that person, who must deposit with the administrator security for their payment⁷. The sum to be deposited must be such as the administrator may determine, and he must not act without the deposit having been made⁸. The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company, as an expense of the administration⁹; and, to the extent that any such deposit is not required for the payment of expenses summoning and holding the meeting, it must be repaid to the person who made it¹⁰.

1 Insolventcy Rules 1986, SI 1986/1925, r 2.21(1)(a) (as originally enacted). See para 145 note 10 ante. Rule 2.21(1) (as originally enacted) does not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors: r 2.21(1) (as originally enacted). As to the duty of the administrator to summon meetings at the request of creditors see para 161 ante.

2 Ibid r 2.21(1)(b) (as originally enacted). See note 1 supra.

3 Ibid r 2.21(1)(c) (as originally enacted). See note 1 supra.

4 Ie in accordance with the Insolventcy Act 1986 s 17(3) (as originally enacted): see para 161 ante.

5 For the meaning of 'venue' see para 91 note 7 ante.

6 Insolventcy Rules 1986, SI 1986/1925, r 2.21(2) (as originally enacted). See further para 190 ante.

7 Ibid r 2.21(3) (as originally enacted).

8 Ibid r 2.21(4) (as originally enacted).

9 Ibid r 2.21(5) (as originally enacted).

10 Ibid r 2.21(6) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(iv) Meetings of Creditors and Members/193. Entitlement to vote; proxies.

193. Entitlement to vote; proxies.

Subject to the following provisions, at a meeting of creditors in administration proceedings a person is entitled to vote only if:

- 352 (1) he has given to the administrator, not later than 12.00 hours on the business day¹ before the day fixed for the meeting, details in writing of the debt² which he claims to be due to him from the company, and the claim has been duly admitted under the provisions described below³; and
- 353 (2) there has been lodged with the administrator any proxy⁴ which he intends to be used on his behalf⁵.

The administrator or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim⁶.

Votes are calculated according to the amount of a creditor's debt as at the date of the administration order, deducting any amounts paid in respect of the debt after that date⁷.

A creditor may not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose⁸. If a creditor is a creditor in more than one capacity, the creditor may split his claim for voting purposes⁹.

The chairman's decision in respect of any matter arising under these provisions is subject to appeal to the court by any creditor¹⁰.

At a meeting of creditors, a secured creditor¹¹ is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security as estimated by him¹².

A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing:

- 354 (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made, or in the case of a company, which has not gone into liquidation, as a security in his hands¹³; and
- 355 (b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim¹⁴.

For the purpose of entitlement to vote at a creditors' meeting in administration proceedings, a seller of goods to the company under a retention of title agreement¹⁵ must deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in the possession of the company¹⁶.

An owner of goods under a hire-purchase¹⁷ or chattel leasing agreement¹⁸, or a seller of goods under a conditional sale agreement¹⁹, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the administration order²⁰. However,

in calculating the amount of any debt for this purpose, no account must be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition for an administration order or any matter arising in consequence of that, or of the making of the order²¹.

- 1 For the meaning of 'business day' see para 113 note 4 ante.
- 2 Details of the debt must include any calculation for the purposes of the Insolvency Rules 1986, SI 1986/1925, rr 2.24-2.27 (as originally enacted) (see the text and notes 11-21 infra): r 2.22(1) (as originally enacted). See para 145 note 10 ante.
- 3 Ibid r 2.22(1)(a) (as originally enacted). The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with this requirement, if satisfied that the failure was due to circumstances beyond the creditor's control: r 2.22(2) (as originally enacted).
- 4 The provisions relating to proxies and company representation are the same as those which apply to meetings in a winding up: see para 657 et seq post.
- 5 Insolvency Rules 1986, SI 1986/1925, r 2.22(1)(b) (as originally enacted).
- 6 Ibid r 2.22(3) (as originally enacted).
- 7 Ibid r 2.22(4) (as originally enacted).
- 8 Ibid r 2.22(5) (as originally enacted). See also para 124 ante.
- 9 *Re Polly Peck International plc* [1991] BCC 503.
- 10 Insolvency Rules 1986, SI 1986/1925, r 2.23(2) (as originally enacted). See further para 194 post. As to the procedure for making an appeal see para 1030 et seq post.
- 11 For the meaning of 'secured creditor' see para 109 note 10 ante.
- 12 Insolvency Rules 1986, SI 1986/1925, r 2.24 (as originally enacted).
- 13 Ibid r 2.25(a) (as originally enacted).
- 14 Ibid r 2.25(b) (as originally enacted).
- 15 As to retention of title agreements see COMPANIES vol 15 (2009) PARA 1285.
- 16 Insolvency Rules 1986, SI 1986/1925, r 2.26 (as originally enacted).
- 17 As to the meaning of 'hire-purchase agreement' see para 149 note 8 ante.
- 18 As to chattel leasing agreements see PERSONAL PROPERTY vol 35 (Reissue) para 1228.
- 19 As to the meaning of 'conditional sale agreement' see para 149 note 9 ante.
- 20 Insolvency Rules 1986, SI 1986/1925, r 2.27(1) (as originally enacted).
- 21 Ibid r 2.27(2) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iv) Meetings of Creditors and Members/194. Admission and rejection of claims.

194. Admission and rejection of claims.

At any creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim¹. If the chairman is in doubt whether a claim should be admitted or rejected, he must mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained². The chairman's decision under these provisions is subject to appeal to the court by any creditor³. If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such order as it thinks just⁴. In the case of the meeting summoned to consider the administrator's proposals⁵, an application to the court by way of appeal under the above provisions against a decision of the chairman may not be made later than 28 days after the delivery⁶ of the administrator's report⁷. Neither the administrator nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under these provisions, unless the court makes an order to that effect⁸.

1 Insolvency Rules 1986, SI 1986/1925, r 2.23(1) (as originally enacted). See para 145 note 10 ante. See also para 124 ante.

2 Ibid r 2.23(3) (as originally enacted).

3 Ibid r 2.23(2) (as originally enacted). As to the procedure for making an appeal see para 1030 et seq post.

4 Ibid r 2.23(4) (as originally enacted).

5 Ie under the Insolvency Act 1986 s 23 (as originally enacted): see para 175 ante.

6 Ie in accordance with ibid s 24(4) (as originally enacted): see para 178 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.23(5) (as originally enacted).

8 Ibid r 2.23(6) (as originally enacted). Cf *Re a Debtor (No 222 of 1990), ex p Bank of Ireland (No 2)* [1993] BCLC 233.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iv) Meetings of Creditors and Members/195. Resolutions and minutes.

195. Resolutions and minutes.

At a creditors' meeting in administration proceedings, a resolution is passed when a majority, in value, of those present and voting, in person or by proxy, have voted in favour of it¹; but any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the company².

The chairman of the meeting must cause minutes of its proceedings to be entered in the company's minute book³. The minutes must include a list of the creditors who attended personally or by proxy, and, if a creditors' committee⁴ has been established, the names and addresses of those elected to be members of the committee⁵.

1 Insolventy Rules 1986, SI 1986/1925, r 2.28(1) (amended by SI 1987/1919). See para 145 note 10 ante. As to evidence of proceedings at meetings see the Insolventy Rules 1986, SI 1986/1925, r 12.5; and para 1049 post.

2 Ibid r 2.28(1A) (added by SI 1987/1919). For the meaning of 'connected' with a company see para 5 ante.

3 Insolventy Rules 1986, SI 1986/1925, r 2.28(2) (as originally enacted).

4 As to the creditors' committee see para 197 et seq post.

5 Insolventy Rules 1986, SI 1986/1925, r 2.28(3) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/ (iv) Meetings of Creditors and Members/196. Venue and conduct of company meetings.

196. Venue and conduct of company meetings.

Where the administrator summons a meeting of members of the company, he must fix a venue¹ for it having regard to their convenience².

The chairman of the meeting must be the administrator or a person nominated by him in writing to act in his place³. A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company⁴, or an employee of the administrator or his firm who is experienced in insolvency matters⁵.

If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day⁶, to the business day immediately following⁷.

Subject to these provisions, the meeting must be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act 1985⁸.

The chairman of the meeting must cause minutes of its proceedings to be entered in the company's minute book⁹.

1 For the meaning of 'venue' see para 91 note 7 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.31(1) (as originally enacted). See para 145 note 10 ante.

3 Ibid r 2.31(2) (as originally enacted).

4 Ibid r 2.31(3)(a) (as originally enacted). As to insolvency practitioners and their qualification see para 8 et seq ante.

5 Ibid r 2.31(3)(b) (as originally enacted).

6 For the meaning of 'business day' see para 113 note 4 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.31(4) (as originally enacted).

8 Ibid r 2.31(5) (as originally enacted). See further COMPANIES vol 14 (2009) PARA 632 et seq.

9 Ibid r 2.31(6) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/197. Creditors' committee.

(v) Creditors' Committee

197. Creditors' committee.

Where a meeting of creditors summoned to consider the administrator's proposals¹ has approved such proposals, with or without modifications², the meeting may, if it thinks fit, establish a committee ('the creditors' committee') to exercise the functions conferred on it by or under the Insolvency Act 1986³. If such a committee is established, the committee may, on giving not less than seven days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require⁴.

The acts of the creditors' committee established for any administration are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee member's representative or in the formalities of its establishment⁵.

1 le under the Insolvency Act 1986 s 23: see para 175 ante.

2 For the meaning of 'modifications' see para 84 note 5 ante.

3 Insolvency Act 1986 s 26(1). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the functions of the creditors' committee generally see para 200 post.

The court ought to direct an administrator to act contrary to the views of the creditors' committee in exceptional circumstances only: *Re CE King Ltd (in administration)* [2000] 2 BCLC 297 at 306 per Neuberger J.

4 Insolvency Act 1986 s 26(2). See further para 206 post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.46A (added by SI 1987/1919). See para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/198. Constitution of creditors' committee.

198. Constitution of creditors' committee.

Where it is resolved by a creditors' meeting to establish a creditors' committee for the purposes of the administration, the committee must consist of at least three and not more than five creditors of the company elected at the meeting¹; and any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote². A body corporate may be a member of the committee, but it cannot act as such otherwise than by a duly appointed representative³.

1 Insolvency Rules 1986, SI 1986/1925, r 2.32(1) (as originally enacted). See para 145 note 10 ante. See *Re Polly Peck International plc* [1991] BCC 503 (where there are more than five candidates for election to the creditors' committee, the five creditors who attract the greatest number of votes by value on a single ballot are appointed to the committee).

2 Insolvency Rules 1986, SI 1986/1925, r 2.32(2) (as originally enacted). As to creditors' entitlement to vote see para 193 ante.

3 Ibid r 2.32(3) (as originally enacted). As to the appointment of representatives see para 202 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/199. Formalities of establishment.

199. Formalities of establishment.

The creditors' committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate of its due constitution¹.

No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by his proxy-holder or the representative of a corporation² present at the meeting establishing the committee³. The administrator's certificate of the committee's due constitution must not issue unless and until at least three of the persons who are to be members of the committee have agreed to act⁴. As and when the others, if any, agree to act, the administrator must issue an amended certificate⁵. The certificate, and any amended certificate, must be filed in court⁶ by the administrator⁷.

If, after the first establishment of the committee, there is any change in its membership, the administrator must report the change to the court⁸.

1 Insolvency Rules 1986, SI 1986/1925, r 2.33(1) (as originally enacted). See para 145 note 10 ante. For the prescribed form of certificate of constitution of the creditors' committee see rr 2.33, 12.7, Sch 4 Form 2.13 (as originally enacted).

2 *Ibid* under the Companies Act 1985 s 375: see COMPANIES vol 14 (2009) PARA 661.

3 Insolvency Rules 1986, SI 1986/1925, r 2.33(2) (substituted by SI 1987/1919).

4 Insolvency Rules 1986, SI 1986/1925, r 2.33(2A) (added by SI 1987/1919).

5 Insolvency Rules 1986, SI 1986/1925, r 2.33(3) (as originally enacted). For the prescribed form of amended certificate see Sch 4 Form 2.13 (as originally enacted).

6 For the meaning of 'file in court' see para 129 note 3 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.33(4) (as originally enacted).

8 *Ibid* r 2.33(5) (as originally enacted). For the prescribed form of notice by the administrator of a change in committee membership see Sch 4 Form 2.14.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

199 Formalities of establishment

TEXT AND NOTES--See SI 1986/1925 r 2.33A (limited disclosure of para 49 statement) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/200. Functions and meetings of the committee.

200. Functions and meetings of the committee.

The creditors' committee must assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time¹.

Meetings of the committee must be held when and where determined by the administrator². The administrator must, however, call a first meeting of the committee not later than three months after its establishment; and thereafter he must call a meeting:

- 356 (1) if so requested by a member of the committee or his representative, the meeting then to be held within 21 days of the request being received by the administrator³; and
- 357 (2) for a specified date, if the committee has previously resolved that a meeting be held on that date⁴.

The administrator must give seven days' written notice of the venue⁵ of any meeting to every member of the committee, or his representative⁶ designated for that purpose, unless in any case the requirement of notice has been waived by or on behalf of any member; and waiver may be signified either at or before the meeting⁷.

1 Insolventcy Rules 1986, SI 1986/1925, r 2.34(1) (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.34(2) (as originally enacted).

3 Ibid r 2.34(3)(a) (as originally enacted).

4 Ibid r 2.34(3)(b) (as originally enacted).

5 For the meaning of 'venue' see para 91 note 7 ante.

6 As to committee members' representatives see para 202 post.

6 Insolventcy Rules 1986, SI 1986/1925, r 2.34(4) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/201. The chairman and quorum at meetings.

201. The chairman and quorum at meetings.

The chairman at any meeting of the creditors' committee must be the administrator or a person nominated by him in writing to act¹. A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company², or an employee of the administrator or his firm who is experienced in insolvency matters³.

A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least two members are present or represented⁴.

1 Insolvency Rules 1986, SI 1986/1925, r 2.35(1) (as originally enacted). See para 145 note 10 ante. Rule 2.35(1) (as originally enacted) is subject to r 2.44(3) (as originally enacted) (administrator required to attend at meeting: see para 206 post): r 2.35(1) (as originally enacted).

2 Ibid r 2.35(2)(a) (as originally enacted). As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Ibid r 2.35(2)(b) (as originally enacted).

4 Ibid r 2.36 (as originally enacted). As to committee members' representatives see para 202 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/202. Committee members' representatives.

202. Committee members' representatives.

A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose¹. A person acting as a committee member's representative must, however, hold a letter of authority entitling him so to act, either generally or specially, and signed by or on behalf of the committee member; and for this purpose, any proxy or any authorisation² in relation to any meeting of creditors of the company is, unless it contains a statement to the contrary, to be treated as such a letter of authority to act generally signed by or on behalf of the committee member³.

The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient⁴.

No member may be represented by a body corporate, or by a person who is an undischarged bankrupt, or who is subject to a composition or arrangement with his creditors⁵.

No person may act, on the same committee, at one and the same time as representative of more than one committee member⁶ or may act both as a member of the committee and as representative of another member⁷.

Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature⁸.

1 Insolventcy Rules 1986, SI 1986/1925, r 2.37(1) (as originally enacted). See para 145 note 10 ante.

2 le under the Companies Act 1985 s 375: see COMPANIES vol 14 (2009) PARA 661.

3 Insolventcy Rules 1986, SI 1986/1925, r 2.37(2) (amended by SI 1987/1919).

4 Insolventcy Rules 1986, SI 1986/1925, r 2.37(3) (as originally enacted).

5 Ibid r 2.37(4) (as originally enacted).

6 Ibid r 2.37(5)(a) (as originally enacted).

7 Ibid r 2.37(5)(b) (as originally enacted).

8 Ibid r 2.37(6) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/203. Termination of membership and removal.

203. Termination of membership and removal.

A member of the committee may resign by notice in writing delivered to the administrator¹.

Membership of the creditors' committee is automatically terminated if the member:

- 358 (1) becomes bankrupt, or compounds or arranges with his creditors²;
- 359 (2) at three consecutive meetings of the committee is neither present nor represented, unless at the third of those meetings it is resolved that this provision is not to apply in his case³; or
- 360 (3) ceases to be, or is found never to have been, a creditor⁴.

If, however, the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee⁵.

A member of the committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution⁶.

1 Insolventy Rules 1986, SI 1986/1925, r 2.38 (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.39(1)(a) (as originally enacted).

3 Ibid r 2.39(1)(b) (as originally enacted).

4 Ibid r 2.39(1)(c) (as originally enacted).

5 Ibid r 2.39(2) (as originally enacted).

6 Ibid r 2.40 (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/204. Vacancies.

204. Vacancies.

If there is a vacancy in the membership of the creditors' committee, the vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below the minimum required¹.

The administrator may appoint any creditor, being qualified to be a member of the committee², to fill the vacancy, if a majority of the other members of the committee agree to the appointment, and the creditor concerned consents to act³.

1 Insolvency Rules 1986, SI 1986/1925, r 2.41(1), (2) (as originally enacted). See para 145 note 10 ante. As to the minimum number of members required see r 2.32 (as originally enacted); and para 198 ante.

2 As to the qualifications to be a member of the committee see para 198 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.41(3) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/205. Procedure at meetings; resolutions by post.

205. Procedure at meetings; resolutions by post.

At any meeting of the creditors' committee, each member of it, whether present himself, or by his representative¹, has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it². Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting³; and a record of each resolution must be signed by the chairman and placed in the company's minute book⁴.

The administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member, or his representative designated for the purpose, a copy of the proposed resolution⁵. Where the administrator makes use of such procedure, he must send out to members of the committee or their representatives, as the case may be, a copy of any proposed resolution on which a decision is sought which must be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent⁶.

Any member of the committee may, within seven business days⁷ from the date of the administrator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution⁸. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it⁹. A copy of every resolution passed under this procedure, and a note that the committee's concurrence was obtained, must be placed in the company's minute book¹⁰.

1 As to committee members' representatives see para 202 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.42(1) (as originally enacted). See para 145 note 10 ante.

3 Ibid r 2.42(2) (as originally enacted).

4 Ibid r 2.42(3) (as originally enacted).

5 Ibid r 2.43(1) (as originally enacted).

6 Ibid r 2.43(2) (amended by SI 1987/1919).

7 For the meaning of 'business day' see para 113 note 4 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.43(3) (as originally enacted).

9 Ibid r 2.43(4) (as originally enacted).

10 Ibid r 2.43(5) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/206. Information from administrator.

206. Information from administrator.

Where the committee resolves to require the attendance of the administrator¹, the notice to him must be in writing signed by the majority of the members of the committee for the time being; and a member's representative² may sign for him³.

The meeting at which the administrator's attendance is required must be fixed by the committee for a business day⁴; and must be held at such time and place as he determines⁵.

Where the administrator so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the administrator or a nominee of his⁶.

1 Ie under the Insolvency Act 1986 s 26(2) (as originally enacted): see para 197 ante.

2 As to committee members' representatives see para 202 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.44(1) (as originally enacted). See para 145 note 10 ante.

4 For the meaning of 'business day' see para 113 note 4 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.44(2) (as originally enacted).

6 Ibid r 2.44(3) (as originally enacted). As to the general provisions relating to the chairman at meetings see para 201 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/207. Expenses of members.

207. Expenses of members.

The administrator must defray out of the assets of the company any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives¹ in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the administration². These provisions do not, however, apply to any meeting of the committee held within three months of a previous meeting, unless the meeting in question is summoned at the instance of the administrator³.

1 As to committee members' representatives see para 202 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.45(1) (as originally enacted). See para 145 note 10 ante.

3 Ibid r 2.45(2) (as originally enacted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(v) Creditors' Committee/208. Members' dealings with the company.

208. Members' dealings with the company.

Membership of the committee does not prevent a person from dealing with the company while the administration order is in force, provided that any transactions in the course of such dealings are in good faith and for value¹.

The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to these requirements, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction².

1 Insolvency Rules 1986, SI 1986/1925, r 2.46(1) (as originally enacted). See para 145 note 10 ante.

2 Ibid r 2.46(2) (as originally enacted). As to the making of applications see para 1055 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(vi) Protection of Interests of Creditors and Members/209. Petition on grounds of unfairly prejudicial conduct.

(vi) Protection of Interests of Creditors and Members

209. Petition on grounds of unfairly prejudicial conduct.

At any time when an administration order is in force, a creditor or member of the company (or, where applicable¹, the Financial Services Authority² or the scheme manager³) may apply to the court by petition for an order⁴ on the ground:

- 361 (1) that the company's affairs, business⁵ and property⁶ are being or have been managed by the administrator in a manner which is unfairly prejudicial⁷ to the interests of some part of its creditors or members (including at least himself⁸), or of its creditors or members generally⁹; or
- 362 (2) that any actual or proposed act or omission of the administrator is or would be so prejudicial¹⁰.

Any creditor or member making an application under this provision should have a tangible interest in the application¹¹. Nothing in the provisions giving the administrator power to deal with charged property¹² is to be taken as prejudicing any such application to the court¹³.

1 le where an administration petition is presented pursuant to the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) (see para 147 notes 14-15 ante).

2 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

3 See the Insolvency Act 1986 s 27(1); modified by the Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 8 (amended by SI 1998/1129; SI 2001/3649). The provisions of the Insolvency Act 1986 s 27(1), (5) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. For the meaning of 'scheme manager' for these purposes see the Financial Services and Markets Act 2000 s 212; and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 583.

4 As to the orders which may be made on the petition see para 210 post.

5 As to the meaning of 'business' see para 156 note 1 ante.

6 As to the meaning of 'property' see para 489 note 8 post.

7 The courts have considered cases on the Companies Act 1985 s 459 (as amended) as to unfair prejudice: see eg *Re a Company (No 00709 of 1992)*, *O'Neill v Phillips* [1999] 2 All ER 961, [1999] 1 WLR 1092, HL; and COMPANIES vol 14 (2009) PARA 466 et seq.

8 le, in the circumstances set out in note 1 supra, including the applicant himself where he is a creditor or member: Insolvency Act 1986 s 27(1)(a); modified by the Banks (Administration Proceedings) Order 1989, SI 1989/1276, Schedule para 9.

9 Insolvency Act 1986 s 27(1)(a). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante.

See *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760, sub nom *Re Charnley Davies Ltd* [1990] BCC 605 (allegation that the administrator was negligent in the sale of the company's assets was an allegation of misconduct only and not a proper complaint to bring under the Insolvency Act 1986 s 27).

The Insolvency Act 1986 s 27 (as amended) is modified in its application to special administration regimes (see para 145 ante): see the Water Industry Act 1991 Sch 3 Pt I paras 1, 10, Pt II paras 11-12 (Sch 3 Pt I para 10 prospectively amended by the Water Act 2003 s 101(1), Sch 8 paras 2, 51) (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 10, Pt III paras 20-21 (Sch 6 Pt I para 10 amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 paras 1, 18) (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 12, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 10, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 24 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

10 Insolvency Act 1986 s 27(1)(b).

11 See by analogy *Re Land and Property Trust Co plc* [1991] BCLC 845, [1991] BCC 446; *Re Pimlico Capital Ltd* [2002] EWHC 878 (Ch) at [40], [2002] 2 BCLC 544 at [40] per Lawrence Collins J.

12 Ie the Insolvency Act 1986 s 15 (see para 2098 ante) or s 16 (Scotland).

13 Ibid s 27(5).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

209 Petition on grounds of unfairly prejudicial conduct

NOTES--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

NOTE 9--Railways Act 1993 Sch 6 para 1 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941. Railways Act 1993 Sch 6 para 10 further amended: Railways Act 2005 Sch 13 Pt 1; SI 2009/1941. Greater London Authority Act 1999 Sch 14 paras 1, 10 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(vi) Protection of Interests of Creditors and Members/210. Orders which may be made.

210. Orders which may be made.

On a petition presented to the court on the grounds of unfairly prejudicial conduct¹ the court may, subject to the following provisions, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit².

Such an order must not prejudice or prevent:

- 363 (1) the implementation of a voluntary arrangement which has been approved³, or any compromise or arrangement which has been sanctioned⁴; or
- 364 (2) where the application for the order was made more than 28 days after the approval of any proposals or revised proposals⁵, the implementation of those proposals or revised proposals⁶.

Such an order may in particular:

- 365 (a) regulate the future management by the administrator of the company's affairs, business⁷ and property⁸;
- 366 (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has omitted to do⁹;
- 367 (c) require the summoning of a meeting of creditors or members¹⁰ for the purpose of considering such matters as the court may direct¹¹;
- 368 (d) discharge the administration order and make such consequential provision as the court thinks fit¹².

1 See para 209 ante.

2 Insolvency Act 1986 s 27(2). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. See *Re Charnley Davies Ltd* [1988] BCLC 243, 4 BCC 152 (trial of preliminary issues refused); *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760, sub nom *Re Charnley Davies Ltd* [1990] BCC 605 (conduct of administrator to be judged by standards of ordinary skilled practitioner).

The Insolvency Act 1986 s 27 (as amended) is modified in its application to special administration regimes (see para 145 ante): see the Water Industry Act 1991 Sch 3 Pt I paras 1, 10, Pt II paras 11-12 (Sch 3 Pt I para 10 prospectively amended by the Water Act 2003 s 101(1), Sch 8 paras 2, 51) (statutory water and sewerage undertakers and qualifying licensed water suppliers); the Railways Act 1993 Sch 6 Pt I paras 1, 10, Pt III paras 20-21 (Sch 6 Pt I para 10 amended by the Railways and Transport Safety Act 2003 s 16(5), Sch 2 paras 1, 18) (railway administration orders); the Transport Act 2000 Sch 1 Pt I paras 1-3, 12, Pt II paras 13, 14, 15 (licensed air traffic services companies); the Greater London Authority Act 1999 Sch 14 Pt I paras 1, 10, Pt III paras 20-21 (public-private partnership companies); and the Building Societies Act 1986 Sch 15A Pt I, Pt II paras 6, 24 (Sch 15A added by the Building Societies Act 1997 s 39(2), Sch 6; and amended by the Insolvency Act 2000 s 2(b), Sch 2 para 14(1), (2); the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), Sch 3 paras 131, 210; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 200(2)) (building societies).

3 Ie under the Insolvency Act 1986 Pt 1 (ss 1-7B) (as amended) (see para 71 et seq ante).

4 Ibid s 27(3)(a) (amended by the Insolvency Act 2000 ss 1, 15(1), Sch 1 paras 1, 5, Sch 5). As to the sanctioning of compromises or arrangements see the Companies Act 1985 s 425 (as amended); and COMPANIES vol 15 (2009) PARA 1425 et seq.

5 le under the Insolvency Act 1986 s 24 (see para 178 ante) or s 25 (see para 179 ante).

6 Ibid s 27(3)(b).

7 As to the meaning of 'business' see para 156 note 1 ante.

8 Insolvency Act 1986 s 27(4)(a). As to the meaning of 'property' see para 489 note 8 post.

9 Ibid s 27(4)(b).

10 As to the meaning of 'member' see para 72 note 9 ante.

11 Insolvency Act 1986 s 27(4)(c).

12 Ibid s 27(4)(d).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

210 Orders which may be made

NOTE 2--Railways Act 1993 Sch 6 para 1 amended; Building Societies Act 1986 Sch 15A further amended: SI 2009/1941. Railways Act 1993 Sch 6 para 10 further amended: Railways Act 2005 Sch 13 Pt 1; SI 2009/1941. Greater London Authority Act 1999 Sch 14 paras 1, 10 amended: SI 2009/1941.

NOTE 4--1986 Act s 27(3)(a) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(2) ADMINISTRATION UNDER THE FORMER ADMINISTRATION PROVISIONS/(vi) Protection of Interests of Creditors and Members/211. Duty of administrator where administration order discharged.

211. Duty of administrator where administration order discharged.

Where, on an application on the grounds of unfairly prejudicial conduct, the administration order is discharged¹, the administrator must, within 14 days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies². If, without reasonable excuse, he fails to comply with this provision, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum³.

1 See paras 209-210 ante.

2 Insolvency Act 1986 s 27(6). The provisions of Pt II (ss 8-27) (as amended) are saved for the purposes of administrations commencing before 15 September 2003 and special administration regimes: see para 145 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 Ibid ss 27(6), 430, Sch 10 (s 430, Sch 10 applying without the amendments effected by the Enterprise Act 2002: see para 145 note 10 ante). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to the administrator's duty to report to creditors and to furnish accounts upon the discharge of an administration order see paras 180, 184 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

211 Duty of administrator where administration order discharged

TEXT AND NOTES--Insolvency Act 1986 s 27(6) (as it has effect by virtue of the Enterprise Act 2002 s 249) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(i) Introduction/212. Appointment of administrators and administration orders.

(3) ADMINISTRATION UNDER THE

(i) Introduction

212. Appointment of administrators and administration orders.

A person may be appointed as administrator of a company¹:

- 369 (1) by order of the court²;
- 370 (2) by the holder of a qualifying floating charge³; or
- 371 (3) by the company or its directors⁴.

An administration order is an order appointing a person as the administrator of a company⁵. An administrator is an officer of the court, whether or not he is appointed by the court⁶.

1 For the purposes of the Insolvency Act 1986, 'administrator' of a company means a person appointed under Sch B1 (as added) to manage the company's affairs, business and property: s 8, Sch B1 para 1(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the meaning of 'business' see para 156 note 1 ante. As to the meaning of 'property' see para 489 note 8 post. As to the appointment of joint and concurrent administrators see paras 259-260 post. Where the context requires, 'administrator' includes a reference to a former administrator: Insolvency Act 1986 Sch B1 para 111(1) (as so added). For the purposes of Sch B1 (as added), 'company' includes a company which may enter administration by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 3 (jurisdiction): Insolvency Act 1986 Sch B1 para 111(1) (as so added); and see para 146 note 1 ante. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. A company 'enters administration' when the appointment of an administrator takes effect: Insolvency Act 1986 Sch B1 para 1(2)(b) (as so added).

An act of the administrator of a company is valid in spite of a defect in his appointment or qualification: Sch B1 para 104 (as so added).

2 Ibid Sch B1 para 2(a) (as added: see note 1 supra). Such appointments are made under Sch B1 para 10 (as added) (see para 215 et seq post). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 Ibid Sch B1 paras 2(b), 14(1) (as added: see note 1 supra). Such appointments are made under Sch B1 para 14 (as added) (see para 228 et seq post). 'Floating charge' means a charge which is a floating charge on its creation: Sch B1 para 111(1) (as so added). For these purposes, a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured: (1) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property; (2) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property; or (3) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge: Sch B1 para 14(3) (as so added). For the meaning of 'security' see para 109 note 10 ante.

4 Ibid Sch B1 paras 2(c), 22 (as added: see note 1 supra). Such appointments are made under Sch B1 para 22 (as added) (see para 236 et seq post). A reference in Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: Sch B1 para 105 (as so added).

5 Ibid Sch B1 para 10 (as added: see note 1 supra).

6 Ibid Sch B1 para 5 (as added: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

212 Appointment of administrators and administration orders

NOTE 1--Insolvency Act 1986 Sch B1 paras 111(1A), (1B), 111A added: Insolvency Act 1986 (Amendment) Regulations 2005, SI 2005/879. Insolvency Act 1986 Sch B1 para 111(1A) amended: SI 2009/1941. Now, for the purposes of the Insolvency Act 1986 Sch B1, 'company' means a company registered under the Companies Act 2006 (see COMPANIES vol 14 (2009) PARAS 1, 24), a company incorporated in an EEA state other than the United Kingdom, or a company not incorporated in an EEA state but having its centre of main interests in a member state other than Denmark: Insolvency Act 1986 Sch B1 para 111(1A) (as so added and amended). For the meaning of 'EEA state' see the Insolvency Act 1986 s 436 and PARA 71. In relation to a company, 'centre of main interests' has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office within the meaning of the EC Regulation: Insolvency Act 1986 Sch B1 para 111(1B) (as so added). A company incorporated outside the United Kingdom which has a principal place of business in Northern Ireland may not enter administration under Sch B1 unless it also has a principal place of business in England and Wales or Scotland, or in both: Sch B1 para 111A (as so added).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(i) Introduction/213. Administrator's qualifications and status of company.

213. Administrator's qualifications and status of company.

A person may be appointed as administrator¹ of a company² only if he is qualified to act as an insolvency practitioner³ in relation to the company⁴.

A person may not be appointed as administrator of a company which:

- 372 (1) is in administration⁵;
- 373 (2) is in liquidation by virtue of either a resolution for voluntary winding up⁶ or a winding-up order⁷;
- 374 (3) has a liability in respect of a deposit which it accepted⁸ but is not an authorised deposit taker⁹; or
- 375 (4) effects or carries out contracts of insurance¹⁰.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'administrator' see para 212 note 1 ante.

3 As to qualification to act as an insolvency practitioner see para 8 et seq ante.

4 Insolvency Act 1986 s 8, Sch B1 para 6 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 7 (as added: see note 4 supra). This is subject to Sch B1 paras 90-97, 100-103 (as added) (which make provision about replacement and additional administrators) (see paras 253-260 post): Sch B1 para 7 (as so added). For the meaning of 'in administration' see para 214 note 4 post.

6 Ibid Sch B1 para 8(1)(a) (as added: see note 4 supra). As to resolutions for voluntary winding up see paras 943-944 post. This is subject to Sch B1 para 38 (as added) (which makes provision for a liquidator to make an administration application: see paras 216, 226 post): Sch B1 para 8(2) (as so added).

7 Ibid Sch B1 para 8(1)(b) (as added: see note 4 supra). This is subject to Sch B1 paras 37, 38 (as added) (which provide for the making of applications when a company is in administration: see para 216 post): Sch B1 para 8(3) (as so added).

8 Ie in accordance with the Banking Act 1979 or the Banking Act 1987: Insolvency Act 1986 Sch B1 para 9(1) (a) (as added: see note 4 supra). The relevant provisions of the Banking Act 1979 and the Banking Act 1987 have been repealed.

9 Insolvency Act 1986 Sch B1 para 9(1) (as added: see note 4 supra). For these purposes, 'authorised deposit taker' means a person with permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 348 et seq) to accept deposits: Insolvency Act 1986 Sch B1 para 9(4) (as so added). The provisions of Sch B1 para 9 (as added) must be construed in accordance with the Financial Services and Markets Act 2000 s 22, Sch 2, and any relevant order under s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 84, 85): see the Insolvency Act 1986 Sch B1 para 9(5) (as so added).

10 Ibid Sch B1 para 9(2) (as added: see note 4 supra). This does not, however, apply to a company which: (1) is exempt from the general prohibition (within the meaning of the Financial Services and Markets Act 2000 s 19 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 80)) in relation to effecting or carrying out contracts of insurance (Insolvency Act 1986 Sch B1 para 9(3)(a), (4) (as so added)); or (2) is an authorised deposit taker

effecting or carrying out contracts of insurance in the course of a banking business (Sch B1 para 9(3)(b) (as so added)).

Schedule B1 para 9(2) (as added) does not preclude the making of an administration order in relation to an insurer, and Pt II (ie s 8 (as substituted), Sch B1 (as added)) applies to insurance companies subject to the modifications set out in the Financial Services and Markets Act 2000 (Administration Orders relating to Insurers) Order 2002, SI 2002/1242 (as amended) (the principal modification being that the appointment of an administrator may be made by court order only): art 3 (amended by SI 2003/2134; SI 2004/353). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(i) Introduction/214. Purpose of administration.

214. Purpose of administration.

The administrator¹ of a company² must perform his functions with the objective of:

- 376 (1) rescuing the company as a going concern³;
- 377 (2) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration)⁴; or
- 378 (3) realising property⁵ in order to make a distribution to one or more secured or preferential creditors⁶.

These objectives, as applicable, are known as 'the purpose of administration'⁷.

The administrator must perform his functions as quickly and efficiently as is reasonably practicable⁸ and (subject to the above) in the interests of the company's creditors as a whole⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 3(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. The administrator must perform his functions with this objective unless he thinks either: (1) that it is not reasonably practicable to achieve that objective (Insolvency Act 1986 Sch B1 para 3(3)(a) (as so added)); or (2) that performing his functions with the objective of achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration) would achieve such a result (Sch B1 para 3(3)(b) (as so added)).

4 Ibid Sch B1 para 3(1)(b) (as added: see note 3 supra). A company is 'in administration' while the appointment of an administrator of the company has effect: Sch B1 para 1(2)(a) (as so added).

5 As to the meaning of 'property' see para 489 note 8 post.

6 Insolvency Act 1986 Sch B1 para 3(1)(c) (as added: see note 3 supra). The administrator may perform his functions with this objective only if he thinks that it is not reasonably practicable to achieve either of the other two specified objectives (Sch B1 para 3(4)(a) (as so added)) and he does not unnecessarily harm the interests of the creditors of the company as a whole (Sch B1 para 3(4)(b) (as so added)).

7 Ibid Sch B1 para 111(1) (as added: see note 3 supra).

8 Ibid Sch B1 para 4 (as added: see note 3 supra).

9 Ibid Sch B1 para 3(2) (as added: see note 3 supra). This is subject to Sch B1 para 3(4) (as added) (see note 6 supra); Sch B1 para 3(2) (as so added).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/215. Court's power to make administration order.

(ii) Appointment of Administrator

A. APPOINTMENT OF ADMINISTRATOR BY THE COURT

215. Court's power to make administration order.

The court¹ may make an administration order² in relation to a company³ only if satisfied:

- 379 (1) that the company is or is likely to become unable to pay its debts⁴; and
- 380 (2) that the administration order is reasonably likely to achieve⁵ the purpose of administration⁶.

The court is not obliged to make an administration order when one is applied for: it may also dismiss the application, adjourn the hearing or make other orders at its discretion⁷.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meaning of 'administration order' see para 212 ante. A court in the United Kingdom may not in general make an administration order in relation to an EEA insurer (as defined in the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 2(1)) or any branch thereof or in relation to an EEA credit institution (as defined in the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 2(1)) or any branch thereof: see the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 4(1)(c), (4); Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 3(1)(c), (4). Those regulations modify the law of insolvency in connection with insurers and credit institutions pursuant to EC Council Directive 01/17 (OJ L110, 20.4.01, p 28) on the reorganisation and winding-up of insurance undertakings and EC Council Directive 01/24 (OJ L125, 5.5.01, p 15) on the reorganisation and winding up of credit institutions.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 s 8, Sch B1 paras 2(a), 11(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'unable to pay its debts' see para 147 note 4 ante; definition applied by the Insolvency Act 1986 Sch B1 para 111(1) (as so added). For examples of what constitutes inability to pay see *Re AMCD (Property Holdings) Ltd* [2004] All ER (D) 125 (Jun); *Fliptex Ltd v Hogg* [2004] EWHC 1280 (Ch).

The court may make an administration order whether or not it is satisfied that the company is or is likely to become unable to pay its debts if the administration application (see para 216 post) is made by the holder of a qualifying floating charge in respect of the company's property: Insolvency Act 1986 Sch B1 para 35(1)(a), (2) (a) (as so added). The court may make the order in these circumstances provided it is satisfied that the applicant could appoint an administrator under Sch B1 para 14 (as added) (see para 228 post) and the applicant includes in his application a statement that he is making the application in reliance on the Insolvency Act 1986 Sch B1 para 35 (as added): Sch B1 para 35(1)(b), (2)(b) (as so added). See further para 219 note 3 post. For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

5 'Likely to achieve' has been interpreted as meaning 'having a real prospect of success': see *Re AMCD (Property Holdings) Ltd* [2004] All ER (D) 125 (Jun) per Lewison J; *Re Redman Construction Ltd* [2004] All ER (D) 146 (Jun) per Lewison J.

6 Insolvency Act 1986 Sch B1 para 11(b) (as added: see note 4 supra). For the meaning of 'the purpose of administration' see para 214 ante. The rules dealing with the appointment of an administrator by the court are the Insolvency Rules 1986, SI 1986/1925, rr 2.2-2.14 (as substituted) (see para 217 et seq post).

7 See para 226 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

215 Court's power to make administration order

NOTE 6--Opposition by a majority creditor to the grant of an administration order does not mean that it is not reasonably likely that the purpose of the administration will be achieved: *Re DKLL Solicitors* [2007] EWHC 2067 (Ch), [2008] 1 BCLC 112.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/216. Applications for administration orders.

216. Applications for administration orders.

An application to the court¹ for an administration order² in respect of a company³ (an 'administration application'⁴) may be made only⁵ by:

- 381 (1) the company⁶;
- 382 (2) the directors of the company⁷;
- 383 (3) one or more creditors⁸ of the company⁹;
- 384 (4) the justices' chief executive¹⁰ for a magistrates' court¹¹;
- 385 (5) a combination of those persons¹²;
- 386 (6) the liquidator of the company¹³;
- 387 (7) a holder of a qualifying floating charge¹⁴ in respect of the company's property¹⁵;
- 388 (8) the supervisor of a company voluntary arrangement¹⁶; and
- 389 (9) the Financial Services Authority¹⁷.

An administration application may not be withdrawn without the permission of the court¹⁸.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

2 For the meaning of 'administration order' see para 212 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 In any instrument made before 15 September 2003 (see para 145 ante), a reference to making an application for an administration order by petition is to be treated as including a reference to, inter alia, making an administration application: Enterprise Act 2002 s 248(3), Sch 17 para 1(b).

5 The Insolvency Act 1986 Sch B1 para 12(1) (as added) (see the text and notes 6-12 infra) is without prejudice to s 7(4)(b) (see para 133 ante): see the text and note 14 infra.

6 Ibid s 8, Sch B1 para 12(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

7 Insolvency Act 1986 Sch B1 para 12(1)(b) (as added: see note 6 supra). A reference in Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: Sch B1 para 105 (as so added).

8 For this purpose, 'creditor' includes a contingent creditor and a prospective creditor: ibid Sch B1 para 12(4) (as added: see note 6 supra). The status of the creditor must be established before he is entitled to apply for the appointment of an administrator: *Re Simoco Digital UK Ltd, Thunderbird Industries LLC v Simoco Digital UK Ltd* [2004] EWHC 209 (Ch), [2004] 1 BCLC 541.

9 Insolvency Act 1986 Sch B1 para 12(1)(c) (as added: see note 6 supra).

10 As from a day to be appointed, the reference in ibid Sch B1 para 12(1)(d) (as added) to a justices' chief executive is replaced with a reference to a designated officer: see Sch B1 para 12(1)(d) (as added (see note 6 supra); prospectively amended by the Courts Act 2003 s 109(1), Sch 8 para 299(a)). At the date at which this volume states the law no such day had been appointed.

11 Insolvency Act 1986 Sch B1 para 12(1)(d) (as added (see note 6 supra); prospectively amended (see note 10 supra)). The power of a justices' chief executive (or designated officer) to make an administration application arises in exercise of the power conferred by the Magistrates' Courts Act 1980 s 87A (as added) (enforcement of fines imposed on companies): see *MAGISTRATES* vol 29(2) (Reissue) para 869.

12 Insolvency Act 1986 Sch B1 para 12(1)(e) (as added: see note 6 supra).

13 *Ibid* Sch B1 para 38(1) (as added: see note 6 supra).

14 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

15 Insolvency Act 1986 Sch B1 para 37(2) (as added: see note 6 supra). A holder of a qualifying floating charge may make an administration application only if he could appoint an administrator under Sch B1 para 14 (as added) (see para 228 post) but for Sch B1 para 8(1)(b) (which prevents the appointment of an administrator where a company is in liquidation by virtue of a winding-up order: see para 213 ante): Sch B1 para 37(1) (as so added).

16 *Ibid* s 7(4)(b), Sch B1 para 12(5) (Sch B1 para 12(5) as added (see note 6 supra); and amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 1(1)). For the power of the supervisor of a company voluntary arrangement to make an administration application see para 132 ante.

17 See the Financial Services and Markets Act 2000 s 359(1) (substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 53, 55). As to the Financial Services Authority see *FINANCIAL SERVICES AND INSTITUTIONS* vol 48 (2008) PARAS 4, 6 et seq.

18 Insolvency Act 1986 Sch B1 para 12(3) (as added: see note 6 supra).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in *PARA 2 NOTE 5*.

216 Applications for administration orders

NOTE 8--A person is a creditor within the meaning of the 1986 Act so long as he has a good arguable case that a debt of a sufficient amount is owing to him: *Hammonds (a firm) v Pro-fit USA Ltd* [2007] EWHC 1998 (Ch), [2008] 2 BCLC 159.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/217. Affidavit in support of administration application.

217. Affidavit in support of administration application.

Where it is proposed to apply to the court¹ for an administration order² to be made in relation to a company³, the administration application⁴ must be in the prescribed form⁵ and an affidavit⁶ must be prepared and sworn, with a view to its being filed with the court⁷ in support of the application⁸. If the administration application is to be made by the company or by the directors, the affidavit must be made by one of the directors, or the secretary of the company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors⁹. If the application is to be made by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not himself one of their number¹⁰. If the application is to be made by the supervisor of a voluntary arrangement¹¹, it is to be treated as if it were an application by the company¹².

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

2 For the meaning of 'administration order' see para 212 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 For the meaning of 'administration application' see para 216 ante.

5 For the prescribed form of petition for an administration order see the Insolvency Rules 1986, SI 1986/1925, rr 2.2, 12.7, Sch 4 Form 2.1B (r 2.2 substituted, Sch 4 Form 2.1B added, by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 In complying with the Insolvency Rules 1986, SI 1986/1925, r 2.4 (as substituted) (see para 219 post).

7 For the meaning of 'file in court' see para 129 note 3 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.2(1) (as substituted: see note 5 supra).

9 Ibid r 2.2(2) (as substituted: see note 5 supra).

10 Ibid r 2.2(3) (as substituted: see note 5 supra). In any case there must be stated in the affidavit the nature of the authority of the person acting for the creditors and the means of his knowledge of the matters to which the affidavit relates: r 2.2(3) (as so substituted).

11 In under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante).

12 Insolvency Rules 1986, SI 1986/1925, r 2.2(4) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

217 Affidavit in support of administration application

NOTE 5--SI 1986/1925 Sch 4 Form 2.1B amended: SI 2005/617, SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/218. Form of application.

218. Form of application.

If made by the company¹ or by the directors, the administration application² must state the name of the company and its address for service, which (in the absence of special reasons to the contrary) is that of the company's registered office³. If the application is made by the directors, it must state that it is so made⁴; but from and after its making it is to be treated for all purposes as the application of the company⁵. If made by a single creditor, the application must state his name and address for service⁶. If the application is made by two or more creditors, it must state that it is so made (naming them), but from and after its making it is to be treated for all purposes as the application of only one of them, named in the application as applying on behalf of himself and other creditors⁷. There must be attached to the application a written statement in the prescribed form⁸ by each of the persons proposed to be administrator⁹ stating:

- 390 (1) that he consents to accept appointment¹⁰;
- 391 (2) details of any prior professional relationship or relationships that he has had with the company to which he is to be appointed as administrator¹¹; and
- 392 (3) his opinion that it is reasonably likely that the purpose of administration¹² will be achieved¹³.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'administration application' see para 216 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.3(1) (rr 2.1, 2.3 substituted, Sch 4 Form 2.2B added, by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 I.e. that it is made under the Insolvency Act 1986 Sch B1 para 12(1)(b) (as added) (see para 216 ante): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.3(2) (as substituted: see note 3 supra).

5 Ibid r 2.3(2) (as substituted: see note 3 supra).

6 Ibid r 2.3(3) (as substituted: see note 3 supra).

7 Ibid r 2.3(4) (as substituted: see note 3 supra). An address for service for the one named creditor must be specified: r 2.3(4) (as so substituted).

8 For the prescribed form of written statement see ibid rr 2.3, 12.7, Sch 4 Form 2.2B (as added: see note 3 supra).

9 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

10 Insolvency Rules 1986, SI 1986/1925, r 2.3(5)(a) (as substituted: see note 3 supra).

11 Ibid r 2.3(5)(b) (as substituted: see note 3 supra).

12 For the meaning of 'the purpose of administration' see para 214 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 2.3(5)(a) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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219. Contents of application and affidavit in support.

The administration application¹ must contain a statement of the applicant's belief that the company² is, or is likely to become, unable to pay its debts³. There must also be attached to the application an affidavit in support which must contain:

- 393 (1) a statement of the company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities⁴;
- 394 (2) details of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver⁵ or to appoint⁶ an administrator⁷;
- 395 (3) details of any insolvency proceedings in relation to the company including any petition that has been presented for the winding up of the company so far as within the immediate knowledge of the applicant⁸;
- 396 (4) where it is intended to appoint a number of persons as administrators, details of the matters required to be set out⁹ regarding the exercise of the function of the administrators¹⁰; and
- 397 (5) any other matters which, in the opinion of those intending to make the application for an administration order¹¹, will assist the court¹² in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant¹³.

Where the application is made by the holder of a qualifying floating charge¹⁴ in circumstances where he requires the court to make an administration order regardless of whether the company is able to pay its debts¹⁵, he must give sufficient details in the affidavit in support to satisfy the court that he is entitled to appoint¹⁶ an administrator¹⁷. The affidavit must state whether, in the opinion of the person making the application, the European Regulation on Insolvency Proceedings¹⁸ will apply¹⁹ and if so, whether the proceedings will be main proceedings²⁰ or territorial proceedings²¹.

Where the administration application is made either by a liquidator²² or by the holder of a qualifying floating charge who would otherwise be prevented from making an application by the existence of a winding-up order²³, the affidavit in support of the application must additionally²⁴ contain:

- 398 (a) full details of the existing insolvency proceedings, the name and address of the liquidator, the date he was appointed and by whom²⁵;
- 399 (b) the reasons why it has subsequently been considered appropriate that an administration application should be made²⁶; and
- 400 (c) all other matters that would, in the opinion of the applicant, assist the court in considering the need to make provisions in respect of matters arising in connection with the liquidation²⁷.

Where the application is made by the holder of a qualifying floating charge, he must set out sufficient evidence in the affidavit to satisfy the court that he is entitled to appoint an administrator²⁸.

1 For the meaning of 'administration application' see para 216 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.4(1) (rr 2.1, 2.4, 2.11 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. This requirement does not apply where the applicant is the holder of a qualifying floating charge in respect of the company's property and includes in his application a statement that he is making the application in reliance on the Insolvency Act 1986 Sch B1 para 35 (as added) (application by holder of floating charge): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.4(1) (as so substituted). In these circumstances, the court may make an administration order whether or not satisfied that the company is or is likely to become unable to pay its debts: see the Insolvency Act 1986 Sch B1 para 35 (as added); and para 215 note 4 ante. For the meaning of 'floating charge' see para 212 note 3 ante.

For the meaning of 'unable to pay its debts' see para 147 note 4 ante; definition applied by the Insolvency Act 1986 Sch B1 para 111(1) (as so added). For the meaning of 'debt' see para 749 post. The provisions of the Insolvency Rules 1986, SI 1986/1925, r 13.12 (as amended) apply where a company is in administration and must be read as if references to winding-up were a reference to administration: r 13.12(5) (added by SI 2003/1730). For the meaning of 'in administration' see para 214 note 4 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.4(2)(a) (as substituted: see note 3 supra).

5 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338. If an administrative receiver has been appointed, that fact must also be stated in the affidavit: Insolvency Rules 1986, SI 1986/1925, r 2.4(2)(b) (as substituted: see note 3 supra).

6 Ie under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 post): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.4(2)(b) (as substituted: see note 3 supra).

7 Ibid r 2.4(2)(b) (as substituted: see note 3 supra).

8 Ibid r 2.4(2)(c) (as substituted: see note 3 supra).

9 Ie the matters set out in the Insolvency Act 1986 Sch B1 para 100(2) (as added) (see para 259 post): see the Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.4(2)(d) (as substituted: see note 3 supra).

10 Ibid r 2.4(2)(d) (as substituted: see note 3 supra).

11 For the meaning of 'administration order' see para 212 ante.

12 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

13 Insolvency Rules 1986, SI 1986/1925, r 2.4(2)(e) (as substituted: see note 3 supra).

14 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

15 Ie in reliance on the Insolvency Act 1986 Sch B1 para 35 (as added) (see para 215 note 4 ante): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.4(3) (as substituted: see note 3 supra).

16 Ie under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 post): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.4(2)(b) (as substituted: see note 3 supra).

17 Ibid r 2.4(3) (as substituted: see note 3 supra).

18 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

19 Insolvency Rules 1986, SI 1986/1925, r 2.4(4)(i) (as substituted: see note 3 supra).

20 For the meaning of 'main proceedings' see para 460 note 16 post.

21 Insolvency Rules 1986, SI 1986/1925, r 2.4(4)(ii) (as substituted: see note 3 supra). For the meaning of 'territorial proceedings' see para 668 note 17 post.

22 Ie under the Insolvency Act 1986 Sch B1 para 38(1) (as added) (see para 216 ante).

23 Ie under ibid Sch B1 para 37(2) (as added) (see para 216 ante).

24 Ie in addition to the details required by the Insolvency Rules 1986, SI 1986/1925, r 2.4(2), (4) (as substituted) (see the text and notes 4-13, 18-21 supra): r 2.11(1)(d) (as substituted: see note 3 supra).

25 Ibid r 2.11(1)(a) (as substituted: see note 3 supra).

26 Ibid r 2.11(1)(b) (as substituted: see note 3 supra).

27 Ibid r 2.11(1)(c) (as substituted: see note 3 supra).

28 Ibid r 2.11(2) (as substituted: see note 3 supra). As to the entitlement of the holder of a qualifying floating charge to appoint an administrator see para 228 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

219 Contents of application and affidavit in support

NOTE 3--SI 1986/1925 r 13.12 substituted by SI 2006/1272, and amended by SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/220. Filing of application.

220. Filing of application.

The administration application¹ (and all supporting documents) must be filed with the court², with a sufficient number of copies for service and use³. Each of the copies filed must have applied to it the seal of the court and be issued to the applicant; and on each copy there must be endorsed the date and time of filing⁴. The court must fix a venue⁵ for the hearing of the application and this also must be endorsed on each copy of the application so issued⁶. After the application is filed, it is the duty of the applicant to notify⁷ the court in writing of the existence of any insolvency proceedings, including any insolvency proceedings under the European Regulation on Insolvency Proceedings⁸, in relation to the company⁹, as soon as he becomes aware of them¹⁰.

1 For the meaning of 'administration application' see para 216 ante.

2 For the meaning of 'file in court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 Insolvency Rules 1986, SI 1986/1925, r 2.5(1) (r 2.5 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the copies for service and use referred to in the text see the Insolvency Rules 1986, SI 1986/1925, r 2.6(3); and para 221 post.

4 Ibid r 2.5(2) (as substituted: see note 3 supra).

5 For the meaning of 'venue' see para 91 note 7 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.5(3) (as substituted: see note 3 supra).

7 As to giving notice see the Insolvency Act 1986 Sch B1 para 12(2) (as added); and para 221 post.

8 I.e. EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

9 As to the meaning of 'company' see para 212 note 1 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 2.5(4) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/221. Notification and service of application.

221. Notification and service of application.

As soon as is reasonably practicable after the making of an administration application¹ the applicant must notify:

- 401 (1) any person who has appointed an administrative receiver² of the company³;
- 402 (2) any person who is or may be entitled to appoint an administrative receiver of the company⁴; and
- 403 (3) any person who is or may be entitled to appoint an administrator⁵ of the company⁶.

Copies of the application⁷, together with the affidavits in support of it and the documents attached thereto⁸, must additionally be served:

- 404 (a) if an administrative receiver⁹ has been appointed, on him¹⁰;
- 405 (b) if there is pending a petition for the winding up of the company¹¹, on the petitioner, and also on the provisional liquidator¹², if any¹³;
- 406 (c) if a member state liquidator¹⁴ has been appointed in main proceedings¹⁵ in relation to the company, on him¹⁶;
- 407 (d) on the person proposed as administrator¹⁷;
- 408 (e) if the application is made by anyone other than the company, on the company¹⁸; and
- 409 (f) if a supervisor of a voluntary arrangement¹⁹ has been appointed, on him²⁰.

The applicant must also as soon as reasonably practicable after filing²¹ the application give notice of its being made to:

- 410 (i) any enforcement officer²² or other officer who to his knowledge is charged with an execution or other legal process against the company or its property²³; and
- 411 (ii) any person who to his knowledge has distrained against the company or its property²⁴.

1 For the meaning of 'administration application' see para 216 ante.

2 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

3 Insolvency Act 1986 Sch B1 para 12(2)(a) (as added: see note 2 supra). As to the meaning of 'company' see para 212 note 1 ante. Notification for the purposes of Sch B1 para 12(2) (as added) must be by way of service in accordance with the Insolvency Rules 1986, SI 1986/1925, r 2.8 (as substituted) (see para 222 post), verified in accordance with r 2.9 (as substituted) (see para 223 post): rr 0.2(1), 2.1(2), 2.6(2) (r 0.2(1) substituted by SI 1999/1022; and the Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.6, 2.7 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

- 4 Insolvency Act 1986 Sch B1 para 12(2)(b) (as added: see note 2 supra).
- 5 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.
- 6 Insolvency Act 1986 Sch B1 para 12(2)(c) (as added: see note 2 supra). As to the appointment of administrators by the holders of qualifying floating charges see Sch B1 para 14 (as added); and para 228 post.
- 7 The copies issued by the court under the Insolvency Rules 1986, SI 1986/1925, r 2.5(2) (as substituted) (see para 220 ante); r 2.6(1) (as substituted: see note 3 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.
- 8 As to the supporting affidavits and documents see *ibid* r 2.4 (as substituted); and para 219 ante.
- 9 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 Sch B1 para 111(1) (as added: see note 2 supra).
- 10 *Ibid* Sch B1 para 12(2)(d) (as added: see note 2 supra); Insolvency Rules 1986, SI 1986/1925, r 2.6(3)(a) (as substituted: see note 3 supra). The Insolvency Act 1986 Sch B1 para 12(2)(d) (as added) also provides for applications to be served on such other persons as may be prescribed. 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. The relevant persons are prescribed in the Insolvency Rules 1986, SI 1986/1925, r 2.6(3) (as substituted): see heads (b)-(f) in the text.
- 11 As to petitions to wind up a company see para 450 et seq post.
- 12 As to provisional liquidators see para 491 et seq post.
- 13 Insolvency Rules 1986, SI 1986/1925, r 2.6(3)(b) (as substituted: see note 3 supra). See note 10 supra.
- 14 For the meaning of 'member state liquidator' see para 460 note 15 post.
- 15 For the meaning of 'main proceedings' see para 460 note 16 post.
- 16 Insolvency Rules 1986, SI 1986/1925, r 2.6(3)(c) (as substituted: see note 3 supra). See note 10 supra.
- 17 *Ibid* r 2.6(3)(d) (as substituted: see note 3 supra). See note 10 supra. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.
- 18 *Ibid* r 2.6(3)(e) (as substituted: see note 3 supra). See note 10 supra.
- 19 Is an arrangement under the Insolvency Act 1986 Pt 1 (ss 1-7B) (as amended) (see para 71 et seq ante).
- 20 Insolvency Rules 1986, SI 1986/1925, r 2.6(3)(f) (as substituted: see note 3 supra). See note 10 supra.
- 21 As to the filing of applications see para 220 ante.
- 22 The Insolvency Rules 1986, SI 1986/1925, r 2.7(a) (as substituted) refers to 'a sheriff' but, by virtue of amendments made by the Courts Act 2003 (see eg the Insolvency Act 1986 s 184; and para 884 post), this should be read as referring to an enforcement or other officer.
- 23 Insolvency Rules 1986, SI 1986/1925, r 2.7(a) (as substituted: see note 3 supra).
- 24 *Ibid* r 2.7(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

221 Notification and service of application

NOTE 22--The reference to a sheriff is now to an enforcement officer: SI 1986/1925 r 2.7(a) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/222. Manner in which service to be effected.

222. Manner in which service to be effected.

Service of an administration application¹ must be effected by the applicant, or his solicitor², or by a person instructed by him or his solicitor, not less than five days before the date fixed for the hearing³. Service must be effected:

412 (1) on the company⁴, by delivering the documents to its registered office⁵ or, if that is not practicable, by delivery to its last known principal place of business in England and Wales⁶;

413 (2) on any other person, by delivering the documents to his proper address⁷,

or, in either case, in such other manner as the court⁸ may direct⁹.

Delivery of documents to any place or address may be made by leaving them there, or sending them by first class post¹⁰.

¹ In accordance with the Insolvency Rules 1986, SI 1986/1925, r 2.6 (as substituted) (see para 221 ante): r 2.8(1) (rr 2.1, 2.8 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'administration application' see para 216 ante.

² For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

³ Insolvency Rules 1986, SI 1986/1925, r 2.8(1) (as substituted: see note 1 supra).

⁴ As to the meaning of 'company' see para 212 note 1 ante.

⁵ Insolvency Rules 1986, SI 1986/1925, r 2.8(2)(a) (as substituted: see note 1 supra).

⁶ Ibid r 2.8(3) (as substituted: see note 1 supra).

⁷ Ibid r 2.8(2)(b) (as substituted: see note 1 supra). For these purposes, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address: r 2.8(4) (as so substituted). However, in the case of a person who: (1) is an authorised deposit-taker or former authorised deposit-taker; (2) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, or is, or may be, entitled to appoint an administrator of the company under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 post); and (3) has not notified an address for service, the proper address is the address of an office of that person where, to the knowledge of the applicant, the company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.8(5) (as substituted: see note 1 supra).

For the meanings of 'authorised deposit-taker' and 'former authorised deposit-taker' see para 460 notes 18, 19 post. As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

8 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

9 Insolvency Rules 1986, SI 1986/1925, r 2.8(2)(c) (as substituted: see note 1 supra).

10 Ibid r 2.8(6) (as substituted: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

222 Manner in which service to be effected

NOTE 2--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/223. Proof of service.

223. Proof of service.

Service of an administration application¹ must be verified by an affidavit of service², specifying the date on which, and the manner in which, service was effected³. The affidavit of service, with a sealed copy of the application exhibited to it, must be filed with the court⁴ as soon as reasonably practicable after service, and in any event not less than one day before the hearing of the application⁵.

1 For the meaning of 'administration application' see para 216 ante. As to service see para 222 ante.

2 As to the form of affidavit see the Insolvency Rules 1986, SI 1986/1925, rr 2.9(1), 12.7, Sch 4 Form 2.3B (r 2.9, Sch 4 Form 2.3B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.9(1) (as substituted: see note 2 supra).

4 For the meanings of 'file in court' and 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.9(2) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

223 Proof of service

TEXT AND NOTES 1-3--SI 1986/1925 r 2.9(1) substituted by r 2.9(1), (1A), Sch 4 Form 2.3B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/224. Interim moratorium.

224. Interim moratorium.

Where an administration application¹ in respect of a company² has been made and either the application has not yet been granted or dismissed³, or the application has been granted but the administration order has not yet taken effect⁴:

- 414 (1) no resolution may be passed for the winding up of the company⁵;
 - 415 (2) no order may be made for the winding up of the company⁶;
 - 416 (3) an administrative receiver⁷ of the company may not be appointed⁸; and
 - 417 (4) without the court's permission⁹:
- 3
- 4. (a) no step may be taken to enforce security¹⁰ over the company's property¹¹;
 - 5. (b) no step may be taken to repossess goods in the company's possession under a hire-purchase agreement¹²;
 - 6. (c) a landlord¹³ may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company¹⁴; and
 - 7. (d) no legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company¹⁵.
- 4

These provisions do not prevent or require the permission of the court for the appointment of an administrator¹⁶, the appointment of an administrative receiver of the company, or the carrying out by an administrative receiver (whenever appointed) of his functions¹⁷.

1 For the meaning of 'administration application' see para 216 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 44(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 Insolvency Act 1986 Sch B1 para 44(1)(b) (as added: see note 3 supra). If there is an administrative receiver of the company when the administration application is made, these provisions will not begin to apply until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order: Sch B1 para 44(6) (as so added). For the meaning of 'administration order' see para 212 ante.

5 Ibid Sch B1 paras 42(2), 44(1), (5) (as added: see note 3 supra).

6 Ibid Sch B1 para 42(3) (as added: see note 3 supra). This does not apply to an order made on a petition presented under s 124A (as added and amended) (petition for winding-up in grounds of public interest: see para 444 post) or the Financial Services and Markets Act 2000 s 367 (winding-up by the court: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497): Insolvency Act 1986 Sch B1 paras 42(4), 44(7)(a) (as so added). If a petition presented under one of these provisions comes to the attention of the administrator, he must apply to the court for directions under Sch B1 para 63 (as added) (see para 312 post): Sch B1 para 42(5) (as so added). As to the making of applications see para 1055 et seq post.

7 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (as added: see note 3 supra). As to administrative receivers generally see para 380 et seq post; COMPANIES vol 15 (2009) PARAS 1337-1338.

8 Ibid Sch B1 paras 43(6A), 44(5) (Sch B1 as added (see note 3 supra); Sch B1 para 43(6A) added by Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 2(1), (3)).

9 Where the court gives permission for a transaction under heads (a)-(d) in the text, it may impose a condition on or a requirement in connection with the transaction: Insolvency Act 1986 Sch B1 para 43(7) (as added: see note 3 supra).

10 For the meaning of 'security' see para 109 note 10 ante.

11 Insolvency Act 1986 Sch B1 para 43(2)(b) (as added: see note 3 supra). As to the meaning of 'property' see para 489 note 8 post.

12 Ibid Sch B1 para 43(3)(b) (as added: see note 3 supra). 'Hire-purchase agreement' has the same meaning as in the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) para 95) (see the Insolvency Act 1986 s 436), and for these purposes includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement (see Sch B1 para 111(1) (as so added)). 'Conditional sale agreement' has the same meaning as in the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) para 93); Insolvency Act 1986 s 436. As to chattel leasing agreements see PERSONAL PROPERTY vol 35 (Reissue) para 1228. As to retention of title agreements see COMPANIES vol 15 (2009) PARA 1285.

13 In ibid Sch B1 para 43 (as added and amended), 'landlord' includes a person to whom rent is payable: Sch B1 para 43(8) (as added: see note 3 supra).

14 Ibid Sch B1 para 43(4)(b) (as added: see note 3 supra).

15 Ibid Sch B1 para 43(6)(b) (as added: see note 3 supra).

16 Ie under ibid Sch B1 para 14 (as added) (see para 228 post).

17 Ibid Sch B1 para 44(7)(b)-(d) (as added: see note 3 supra). See also note 6 supra.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

224 Interim moratorium

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/225. Who may be represented at the hearing.

225. Who may be represented at the hearing.

At the hearing of an administration application¹, any of the following may appear or be represented:

- 418 (1) the applicant²;
- 419 (2) in relation to insurers only, the Financial Services Authority³;
- 420 (3) the company⁴;
- 421 (4) one or more of the directors⁵;
- 422 (5) if an administrative receiver⁶ has been appointed, that person⁷;
- 423 (6) any person who has presented a petition for the winding-up of the company⁸;
- 424 (7) the person proposed for appointment as administrator⁹;
- 425 (8) if a member state liquidator¹⁰ has been appointed in main proceedings¹¹ in relation to the company, that person¹²;
- 426 (9) any person that is the holder of a qualifying floating charge¹³;
- 427 (10) any supervisor of a voluntary arrangement¹⁴; and
- 428 (11) with the permission of the court¹⁵, any other person who appears to have an interest justifying his appearance¹⁶.

1 For the meaning of 'administration application' see para 216 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.12(1)(a) (r 2.12 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.12(1)(aa) (added by SI 2002/1242). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

4 Insolvency Rules 1986, SI 1986/1925, r 2.12(1)(b) (as substituted: see note 2 supra). As to the meaning of 'company' see para 212 note 1 ante.

5 Ibid r 2.12(1)(c) (as substituted: see note 2 supra).

6 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

7 Insolvency Rules 1986, SI 1986/1925, r 2.12(1)(d) (as substituted: see note 2 supra).

8 Ibid r 2.12(1)(e) (as substituted: see note 2 supra).

9 Ibid r 2.12(1)(f) (as substituted: see note 2 supra). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

10 For the meaning of 'member state liquidator' see para 460 note 15 post.

11 For the meaning of 'main proceedings' see para 460 note 16 post.

12 Insolvency Rules 1986, SI 1986/1925, r 2.12(1)(g) (as substituted: see note 2 supra).

13 Ibid r 2.12(1)(h) (as substituted: see note 2 supra). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

14 Ibid r 2.12(1)(j) (as substituted: see note 2 supra). The reference in the text to a voluntary arrangement is a reference to a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante).

15 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

16 Insolvency Rules 1986, SI 1986/1925, r 2.12(1)(k) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/226. Powers of court on hearing administration application.

226. Powers of court on hearing administration application.

On hearing an administration application¹, the court² may:

- 429 (1) make the administration order³ sought⁴;
- 430 (2) dismiss the application⁵;
- 431 (3) adjourn the hearing conditionally or unconditionally⁶;
- 432 (4) make an interim order⁷;
- 433 (5) treat the application as a winding-up petition⁸; or
- 434 (6) make any other order which it thinks appropriate⁹.

Where there is an administrative receiver¹⁰ of a company, however, the court must in general dismiss the administration application¹¹.

An appointment of an administrator by administration order takes effect at a time appointed by the order, or where no time is appointed by the order, when the order is made¹². Until an administration order takes effect, the interim moratorium on legal proceedings¹³ continues to apply¹⁴.

1 For the meaning of 'administration application' see para 216 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 For the meaning of 'administration order' see para 212 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 13(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the form of an administration order see the Insolvency Rules 1986, SI 1986/1925, rr 2.12(2), 12.7, Sch 4 Form 2.4B (rr 2.10, 2.12, 2.14, Sch 4 Forms 2.2B, 2.4B substituted by SI 2003/1730). The costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the administration: Insolvency Rules 1986, SI 1986/1925, r 2.12(3) (as so substituted). If the court makes an administration order, it must as soon as reasonably practicable send two sealed copies of the order to the person who made the application (r 2.14(1) (as so substituted)), who must send a sealed copy of the order as soon as reasonably practicable to the person appointed as administrator (r 2.14(2) (as so substituted)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

If the court makes an administration order on hearing an application made by the holder of a qualifying floating charge under the Insolvency Act 1986 Sch B1 para 37(2) (as added) or by a liquidator under Sch B1 para 38(1) (as added) (see para 216 ante), the court must additionally discharge the relevant winding-up order, specify which of the powers under Sch B1 (as added) (having effect with such modifications as the court may specify) are to be exercisable by the administrator, and make other consequential provision: Sch B1 paras 37(3)(a), (c)-(e), 38(2)(a), (c)-(e) (as so added)). In either case, the court must also include in the order: (1) in the case of a liquidator appointed in a voluntary winding-up, his removal from office; (2) details concerning the release of the liquidator; (3) provision for payment of the expenses of the liquidation; (4) provisions regarding any indemnity given to the liquidator; (5) provisions regarding the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator; (6) such provision as the court thinks fit with respect to matters arising in connection with the liquidation; and (7) such other provisions as the court thinks fit: Sch B1 paras 37(3)(b), 38(2)(b) (as so added); Insolvency Rules 1986, SI 1986/1925, r 2.13 (as so substituted). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

Where an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, a person who is the holder of such a charge may apply to the court to have a specified person appointed as administrator (and not the person specified by the administration applicant): Insolvency Act 1986 Sch B1 para 36(1) (as so added). As to the making of applications see para 1055 et seq post. On making such an application, the charge-holder must produce to the court the written consent of all holders of any prior qualifying floating charge, a written statement in the form set out in the Insolvency Rules 1986, SI 1986/1925, rr 2.10, 12.7, Sch 4 Form 2.2B (as substituted) made by the specified person proposed by him as administrator, and sufficient evidence to satisfy the court that he is entitled to appoint an administrator under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 post): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.10(1) (as so substituted). The court must then grant the charge-holder's application unless it thinks it right to refuse the application because of the particular circumstances of the case: Insolvency Act 1986 Sch B1 para 36(2) (as so added). If an administration order is made appointing the specified person, the costs of the person who made the administration application and the applicant under Sch B1 para 36(1) (as added) must, unless the court otherwise orders, be paid as an expense of the administration: Insolvency Rules 1986, SI 1986/1925, r 2.10(2) (as so substituted).

5 Insolvency Act 1986 Sch B1 para 13(1)(b) (as added: see note 4 supra).

6 Ibid Sch B1 para 13(1)(c) (as added: see note 4 supra).

7 Ibid Sch B1 para 13(1)(d) (as added: see note 4 supra). An interim order under Sch B1 para 13(1)(d) (as added) may, in particular, restrict the exercise of a power of the directors or the company or make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company: Sch B1 para 13(3) (as so added). A reference in Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: Sch B1 para 105 (as so added). As to qualification to act as an insolvency practitioner see para 8 et seq ante.

If the court makes an interim order it must give directions as to the persons to whom, and how, notice of that order is to be given: Insolvency Rules 1986, SI 1986/1925, r 2.14(3) (as substituted: see note 4 supra).

8 Insolvency Act 1986 Sch B1 para 13(1)(e) (as added: see note 4 supra). If the court treats the application as a winding-up petition, it make any order which it could make under s 125 (see para 477 post): Sch B1 para 13(1)(e) (as so added).

9 Ibid Sch B1 para 13(1)(f) (as added: see note 4 supra). If the court makes an order under Sch B1 para 13(1)(f) (as added), it must give directions as to the persons to whom, and how, notice of that order is to be given: Insolvency Rules 1986, SI 1986/1925, r 2.14(3) (as substituted: see note 4 supra).

10 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 Sch B1 para 111(1) (as added: see note 4 supra). As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

11 See para 227 post.

12 Insolvency Act 1986 Sch B1 para 13(2) (as added: see note 4 supra).

13 See para 224 ante.

14 Insolvency Act 1986 Sch B1 para 44(1)(b) (as added: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/A. APPOINTMENT OF ADMINISTRATOR BY THE COURT/227. Effect of administrative receivership on administration application.

227. Effect of administrative receivership on administration application.

Where there is an administrative receiver¹ of a company², the court³ must dismiss an administration application⁴ in respect of the company unless:

- 435 (1) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order⁵;
- 436 (2) the court thinks that the security⁶ by virtue of which the receiver was appointed would be liable to be released or discharged⁷ if an administration order were made⁸;
- 437 (3) the court thinks that the security by virtue of which the receiver was appointed would be avoided⁹ if an administration order were made¹⁰; or
- 438 (4) the court thinks that the security by virtue of which the receiver was appointed would¹¹ be challengeable¹².

1 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338. These provisions apply whether the administrative receiver is appointed before or after the making of the administration application: Insolvency Act 1986 Sch B1 para 39(2) (as so added).

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

4 For the meaning of 'administration application' see para 216 ante.

5 Insolvency Act 1986 Sch B1 para 39(1)(a) (as added: see note 1 supra). For the meaning of 'administration order' see para 212 ante.

6 For the meaning of 'security' see para 109 note 10 ante.

7 Ie under the Insolvency Act 1986 ss 238-240 (as amended) (transaction at undervalue and preference: see para 843 et seq post): Sch B1 para 39(1)(b) (as added: see note 1 supra).

8 Ibid Sch B1 para 39(1)(b) (as added: see note 1 supra).

9 Ie under ibid s 245 (as amended) (avoidance of floating charge) (see para 861 et seq post): Sch B1 para 39(1)(c) (as added: see note 1 supra).

10 Ibid Sch B1 para 39(1)(c) (as added: see note 1 supra).

11 Ie under ibid s 242 (as amended) (gratuitous alienations) or s 243 (unfair preferences) or under any rule of law in Scotland: Sch B1 para 39(1)(d) (as added: see note 1 supra).

12 Ibid Sch B1 para 39(1)(d) (as added: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/228. Power to appoint administrator.

B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE

228. Power to appoint administrator.

The holder of a qualifying floating charge¹ in respect of a company's property² may appoint an administrator of the company³ provided:

- 439 (1) he has given at least two business days⁴ written⁵ notice (the 'notice of intention to appoint')⁶ to the holder of any prior qualifying floating charge⁷; and
 440 (2) the holder of any such charge⁸ has consented in writing to the making of the appointment⁹.

An administrator may not be so appointed while a floating charge on which the appointment relies is not enforceable¹⁰ or if a provisional liquidator of the company has been appointed¹¹ or an administrative receiver¹² of the company is in office¹³.

The provisions enabling a holder of a qualifying floating charge to appoint an administrator¹⁴ do not apply in relation to insurers¹⁵.

1 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. For these purposes, a floating charge qualifies if created by an instrument which: (1) states that the Insolvency Act 1986 Sch B1 para 14 (as added) applies to the charge; (2) purports to empower the charge-holder to appoint an administrator of the company; (3) purports to empower the charge-holder to make an appointment which would be the appointment of an administrative receiver within the meaning given by s 29(2) (see COMPANIES vol 15 (2009) PARA 1337); or (4) purports to empower the holder of a floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver: s 8, Sch B1 para 14(2) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post. As to the meaning of 'company' see para 212 note 1 ante.

2 As to the meaning of 'property' see para 489 note 8 post.

3 Insolvency Act 1986 Sch B1 paras 2(b), 14(1) (as added: see note 1 supra). As to the persons who may appoint an administrator see para 212 ante. In any instrument made before 15 September 2003 (see para 145 ante), a reference to the making of an administration order is to be treated as including a reference to the appointment of an administrator under Sch B1 para 14 (as added) or Sch B1 para 22 (as added) (see para 236 post), and a reference to making an application for an administration order by petition is to be treated as including a reference to, inter alia, appointing an administrator under Sch B1 para 14 (as added) or Sch B1 para 22 (as added): Enterprise Act 2002 s 248(3), Sch 17 para 1.

4 'Business day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain: Insolvency Act 1986 s 251. The Secretary of State may by order amend a provision of Sch B1 (as added) which: (1) requires anything to be done within a specified period of time; (2) prevents anything from being done after a specified time; or (3) requires a specified minimum period of notice to be given: Sch B1 para 110(1) (as added: see note 1 supra). Such an order must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament: Sch B1 para 110(2) (as so added). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante.

5 A reference in *ibid* Sch B1 (as added) to a thing in writing includes a reference to a thing in electronic form: Sch B1 para 111(2) (as added: see note 1 *supra*).

6 As to the service of the notice of intention to appoint see para 229 *post*.

7 Insolvency Act 1986 Sch B1 para 15(1)(a) (as added: see note 1 *supra*). In order to qualify the holder to require the giving of notice of intention to appoint, a prior floating charge must satisfy Sch B1 para 14(2) (as added) (see note 1 *supra*): Sch B1 para 15(1)(a) (as so added). One floating charge is prior to another for these purposes if: (1) it was created first; or (2) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party: Sch B1 para 15(2) (as so added).

In any instrument made before 15 September 2003 (see para 145 *ante*), a reference to making an application for an administration order by petition is to be treated as including a reference to, *inter alia*, giving notice under Sch B1 para 15 (as added) or Sch B1 para 26 (as added) (see para 237 *post*): Enterprise Act 2002 s 248(3), Sch 17 para 1(b).

8 *Ie* which satisfies the Insolvency Act 1986 Sch B1 para 14(2) (as added) (see note 1 *supra*).

9 *Ibid* Sch B1 para 15(1)(b) (as added: see note 1 *supra*).

10 *Ibid* Sch B1 para 16 (as added: see note 1 *supra*).

11 Under *ibid* s 135 (see para 491 *post*).

12 As to the meaning of 'administrative receiver' see para 8 note 2 *ante*; definition applied by *ibid* Sch B1 para 111(1) (as added: see note 1 *supra*). As to administrative receivers generally see para 380 *et seq post*; and COMPANIES vol 15 (2009) PARAS 1337-1338.

13 *Ibid* Sch B1 para 17 (as added: see note 1 *supra*).

14 *Ie* *ibid* Sch B1 para 14 (as added) (see the text to notes 1-3 *supra*).

15 Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3 (amended by SI 2004/353).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/229. Notice of intention to appoint.

229. Notice of intention to appoint.

A notice of intention to appoint¹ must be given in the prescribed form². Service of the notice must be effected:

- 441 (1) on the company³, by delivering the documents to its registered office⁴ or, if that is not practicable, by delivery to its last known principal place of business in England and Wales⁵;
- 442 (2) on any other person, by delivering the documents to his proper address⁶,

or, in either case, in such other manner as the court may direct⁷.

Delivery of documents to any place or address may be made by leaving them there, or sending them by first class post⁸.

1 I.e. a notice under the Insolvency Act 1986 Sch B1 para 15(1)(a) (as added) (see para 228 ante).

2 See the Insolvency Rules 1986, SI 1986/1925, rr 2.15(1), 12.7, Sch 4 Form 2.5B (rr 2.1, 2.8, 2.15, Sch 4 Form 2.5B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the purposes of the Insolvency Act 1986 Sch B1 para 44(2) (as added) (interim moratorium: see para 231 post), a copy of the Insolvency Rules 1986, SI 1986/1925, Form 2.5B (as substituted) must be filed with the court at the same time as it is sent in accordance with the Insolvency Act 1986 Sch B1 para 15(1) (as added) (see para 228 ante) to the holder of any prior qualifying floating charge: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.15(2) (as so substituted). For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the qualifying charges which apply for these purposes see para 228 notes 1, 7 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, rr 2.8(2)(a), 2.15(3) (as substituted: see note 2 supra).

5 Ibid r 2.8(3) (as substituted: see note 2 supra).

6 Ibid r 2.8(2)(b) (as substituted: see note 2 supra). For these purposes, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address: r 2.8(4) (as so substituted). However, in the case of a person who: (1) is an authorised deposit-taker or former authorised deposit-taker; (2) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, or is, or may be, entitled to appoint an administrator of the company under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 ante); and (3) has not notified an address for service, the proper address is the address of an office of that person where, to the knowledge of the applicant, the company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address: Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.8(5) (all as substituted: see note 2 supra).

For the meanings of 'authorised deposit-taker' and 'former authorised deposit-taker' see para 460 notes 18, 19 post. As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15

September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

7 Insolvency Rules 1986, SI 1986/1925, r 2.8(2)(c) (as substituted: see note 2 supra).

8 Ibid r 2.8(6) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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230. Charge-holder's consent to appointment.

Where a notice of intention to appoint an administrator¹ has been given and filed with the court², the holder of a prior qualifying floating charge³ may give his written⁴ consent to the appointment⁵. This is done either by completing the section provided on the specified form⁶ and returning to the appointor a copy of the form⁷ or, where either the charge-holder does not choose to complete the section so provided or no such form has been sent to him, by giving written consent, which must be signed and dated and must include:

- 443 (1) details of the name, address of the registered office and the registered number of the company⁸ in respect of which the appointment is proposed to be made⁹;
- 444 (2) details of the charge held by him including the date it was registered and, where applicable, any financial limit and any deeds of priority¹⁰;
- 445 (3) his name and address¹¹;
- 446 (4) the name and address of the holder of the qualifying floating charge who is proposing to make the appointment¹²;
- 447 (5) the date that notice of intention to appoint was given¹³;
- 448 (6) the name of the proposed administrator¹⁴; and
- 449 (7) a statement of consent to the proposed appointment¹⁵.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 In accordance with the Insolvency Rules 1986, SI 1986/1925, rr 2.15 (as added) (see para 229 ante). For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the qualifying charges which apply for these purposes see para 228 notes 1, 7 ante.

4 As to things in writing see para 228 note 5 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.16(4) (r 2.16 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 In the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.5B (see para 229 ante).

7 Ibid r 2.16(4) (as substituted: see note 5 supra).

8 As to the meaning of 'company' see para 212 note 1 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 2.16(5)(a) (as substituted: see note 5 supra).

10 Ibid r 2.16(5)(b) (as substituted: see note 5 supra).

11 Ibid r 2.16(5)(c) (as substituted: see note 5 supra).

12 Ibid r 2.16(5)(d) (as substituted: see note 5 supra).

13 Ibid r 2.16(5)(e) (as substituted: see note 5 supra).

14 Ibid r 2.16(5)(f) (as substituted: see note 5 supra).

15 Ibid r 2.16(5)(g) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/231. Interim moratorium.

231. Interim moratorium.

When a copy of a notice of intention to appoint an administrator¹ has been filed with the court²:

- 450 (1) no resolution may be passed for the winding up of the company³;
 - 451 (2) no order may be made for the winding up of the company⁴;
 - 452 (3) an administrative receiver⁵ of the company may not be appointed⁶; and
 - 453 (4) without the court's permission⁷:
- 5
- 8. (a) no step may be taken to enforce security⁸ over the company's property⁹;
 - 9. (b) no step may be taken to repossess goods in the company's possession under a hire-purchase agreement¹⁰;
 - 10. (c) a landlord¹¹ may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company¹²; and
 - 11. (d) no legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company¹³.
- 6

This moratorium on legal process has effect until such time as either the appointment of the administrator takes effect¹⁴ or the period of five business days¹⁵ beginning with the date of filing expires without an administrator having been appointed¹⁶.

These provisions do not prevent or require the permission of the court for the appointment of an administrator¹⁷, the appointment of an administrative receiver of the company, or the carrying out by an administrative receiver (whenever appointed) of his functions¹⁸.

1 le under the Insolvency Act 1986 Sch B1 para 14 (as added). As to the giving and filing of notices of intention to appoint an administrator see para 229 ante. These provisions apply only if the notice is in the prescribed form: see s 8, Sch B1 para 44(3) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the prescribed form see para 229 note 2 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the filing of notices of intention to appoint see para 229 ante.

3 Insolvency Act 1986 Sch B1 paras 42(2), 44(2), (5) (as added: see note 1 supra). As to the meaning of 'company' see para 212 note 1 ante.

4 Ibid Sch B1 para 42(3) (as added: see note 1 supra). This does not apply to an order made on a petition presented under s 124A (as added and amended) (petition for winding-up in grounds of public interest: see para 444 post) or the Financial Services and Markets Act 2000 s 367 (winding-up by the court: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497): Insolvency Act 1986 Sch B1 paras 42(4), 44(7)(a) (as so added). If a petition presented under one of these provisions comes to the attention of the administrator, he must apply to the court for directions under Sch B1 para 63 (as added) (see para 312 post): Sch B1 para 42(5) (as so added). As to the making of applications see para 1055 et seq post.

5 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by *ibid* Sch B1 para 111(1) (as added: see note 1 *supra*). As to administrative receivers generally see para 380 *et seq post*; and COMPANIES vol 15 (2009) PARAS 1337-1338.

6 *Ibid* Sch B1 paras 43(6A), 44(5) (Sch B1 as added (see note 1 *supra*); Sch B1 para 43(6A) added by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 2(1), (3)).

7 Where the court gives permission for a transaction under heads (a)-(d) in the text it may impose a condition on or a requirement in connection with the transaction: Insolvency Act 1986 Sch B1 para 43(7) (as added: see note 1 *supra*).

8 For the meaning of 'security' see para 109 note 10 ante.

9 Insolvency Act 1986 Sch B1 para 43(2)(b) (as added: see note 1 *supra*). As to the meaning of 'property' see para 489 note 8 *post*.

10 *Ibid* Sch B1 para 43(3)(b) (as added: see note 1 *supra*). As to the meaning of 'hire-purchase agreement' see para 224 note 12 ante.

11 As to the meaning of 'landlord' see para 224 note 13 ante.

12 Insolvency Act 1986 Sch B1 para 43(4)(b) (as added: see note 1 *supra*).

13 *Ibid* Sch B1 para 43(6)(b) (as added: see note 1 *supra*).

14 *Ibid* Sch B1 para 44(2)(a) (as added: see note 1 *supra*).

15 For the meaning of 'business day' see para 228 note 4 ante. As to the amendment of provisions concerning periods of time see para 228 note 4 ante.

16 Insolvency Act 1986 Sch B1 para 44(2)(b) (as added: see note 1 *supra*).

17 *Ie* under *ibid* Sch B1 para 14 (as added) (see para 228 ante).

18 *Ibid* Sch B1 para 44(7)(b)-(d) (as added: see note 1 *supra*). See also note 4 *supra*.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/232. Notice of appointment.

232. Notice of appointment.

The holder of a qualifying floating charge¹ who appoints an administrator² of a company³ must file a notice of appointment with the court⁴. The notice must:

- 454 (1) be in the prescribed form⁵;
- 455 (2) include a statutory declaration⁶ by or on behalf of the person who makes the appointment:
- 7
 - 12. (a) that the person is the holder of a qualifying floating charge in respect of the company's property⁷;
 - 13. (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment⁸; and
 - 14. (c) that the appointment is in accordance with the relevant statutory provisions⁹; and
- 8
 - 456 (3) identify the administrator¹⁰.

The notice of appointment must also be accompanied by a statement by the administrator¹¹ that he consents to the appointment¹², that in his opinion the purpose of administration¹³ is reasonably likely to be achieved¹⁴, and giving such other information and opinions as may be prescribed¹⁵.

Three copies of the notice of appointment must be filed with the court¹⁶, and must be accompanied by:

- 457 (i) the administrator's written statement¹⁷;
- 458 (ii) either evidence that the person making the appointment has given the notice of intention to appoint¹⁸ to the holder of any prior qualifying floating charge¹⁹, or copies of the charge-holders' written consent to the appointment²⁰; and
- 459 (iii) a statement of those matters provided for where a number of persons are appointed to act as administrators²¹, if applicable²².

These provisions are subject to the provisions of the Insolvency Rules 1986 concerning the making of appointments outside business hours²³.

1 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

3 Ie under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 ante). As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 18(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For

the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

5 See the Insolvency Act 1986 Sch B1 para 18(5) (as added: see note 4 supra); and the Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.16(1), 12.7, Sch 4 Form 2.6B (rr 2.1, 2.16, 2.17, Sch 4 Form 2.6B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 A statutory declaration under the Insolvency Act 1986 Sch B1 para 18(2) (as added) is also required to be in the form set out in the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.6B (as substituted: see note 5 supra), and must be made not more than five business days before the form is filed with the court (the 'prescribed period'): Insolvency Act 1986 Sch B1 para 18(6) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, r 2.16(3) (as substituted: see note 5 supra). For the meaning of 'business day' see para 228 note 4 ante.

A person commits an offence if in a statutory declaration he makes a statement which is false and which he does not reasonably believe to be true: Insolvency Act 1986 Sch B1 para 18(7) (as so added). The offence is punishable on indictment by a term of imprisonment not exceeding two years, or a fine, or both, and is punishable summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum, or both: Sch B1 para 106(1) (as so added); s 430, Sch 10 (as amended: see note 4 supra). As to the statutory maximum see para 10 note 1 ante.

7 Ibid Sch B1 para 18(2)(a) (as added: see note 4 supra). As to the meaning of 'property' see para 489 note 8 post.

8 Ibid Sch B1 para 18(2)(b) (as added: see note 4 supra).

9 Ibid Sch B1 para 18(2)(c) (as added: see note 4 supra). The relevant statutory provisions are the provisions of Sch B1 (as added): Sch B1 para 18(2)(c) (as so added).

10 Ibid Sch B1 para 18(3) (as added: see note 4 supra).

11 The statement must be in writing: Insolvency Rules 1986, SI 1986/1925, r 2.16(2)(a) (as substituted: see note 5 supra). See, however, para 228 note 5 ante. The statement must be in the form set out in Sch 4 Form 2.2: r 2.16(2)(a) (as so substituted). For the purpose of the statement, the administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy): Insolvency Act 1986 Sch B1 para 18(4) (as added: see note 4 supra).

12 Ibid Sch B1 para 18(3)(a) (as added: see note 4 supra).

13 For the meaning of 'the purpose of administration' see para 214 ante.

14 Insolvency Act 1986 Sch B1 para 18(3)(b) (as added: see note 4 supra).

15 Ibid Sch B1 para 18(3)(c) (as added: see note 4 supra).

16 Insolvency Rules 1986, SI 1986/1925, r 2.17(1) (as substituted: see note 5 supra). Those copies must have applied to them the seal of the court and must be endorsed with the date and time of filing: r 2.17(1) (as so substituted). The court must issue two of the sealed copies of the notice of appointment to the person making the appointment, who must as soon as reasonably practicable send one of the sealed copies to the administrator: r 2.17(2) (as so substituted).

17 Insolvency Act 1986 Sch B1 para 18(1)(b) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, r 2.16(2)(a) (as substituted: see note 5 supra). The Insolvency Act 1986 Sch B1 para 18(1)(b) (as added) provides that such other documents as may be prescribed may be filed with the court with the notice of appointment. As to the administrator's statement see the text and notes 11-15 supra.

18 As to the giving of the notice of intention to appoint see para 229 ante.

19 Insolvency Rules 1986, SI 1986/1925, r 2.16(2)(b)(i) (as substituted: see note 5 supra). Notices of intention to appoint may be required under the Insolvency Act 1986 Sch B1 para 15(1)(a) (as added) (see para 228 ante). As to the qualifying charges which apply for these purposes see para 228 notes 1, 7 ante.

20 Insolvency Rules 1986, SI 1986/1925, r 2.16(2)(b)(ii) (as substituted: see note 5 supra).

21 As provided for in the Insolvency Act 1986 Sch B1 para 100(2) (as added) (see para 259 post): Insolvency Rules 1986, SI 1986/1925, r 2.16(2)(c) (as substituted: see note 5 supra).

22 Ibid r 2.16(2)(c) (as substituted: see note 5 supra).

23 Ibid r 2.16(6) (as substituted: see note 5 supra). As to the provisions referred to in the text see para 233 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/233. Appointment taking place out of court business hours.

233. Appointment taking place out of court business hours.

When the court¹ is closed (and only when it is closed) the holder of a qualifying floating charge² may file³ a notice of appointment⁴ with the court, notwithstanding that the court is not open for public business⁴, by faxing the form⁵. The filing of a notice in accordance with these provisions has the same effect for all purposes as a notice of appointment filed in the ordinary way⁶, with the court specified in the notice as having jurisdiction in the case⁷, and the appointment takes effect from the date and time of the fax transmission⁸. The appointor must take three copies of the faxed notice of appointment, together with the transmission report showing the date and time that the form was faxed⁹ and all the necessary supporting documents¹⁰, to the court on the next day that the court is open for business¹¹, and must attach to the notice a statement providing full reasons for the out of hours filing of the notice of appointment, including why it would have been damaging to the company¹² and its creditors not to have so acted¹³. The copies of the notice must be sealed by the court and must be endorsed with the date and time when, according to the appointor's fax transmission report, the notice was faxed and the date when the notice and accompanying documents were delivered to the court¹⁴. The court must issue two of the sealed copies of the notice of appointment to the person making the appointment, who must, as soon as reasonably practicable, send one of the copies to the administrator¹⁵.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the qualifying charges which apply for these purposes see para 228 notes 1, 7 ante.

3 For the meaning of 'file with the court' see para 129 note 3 ante.

4 As to the filing of notices of appointment see para 232 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.19(1) (r 2.19, Sch 4 Form 2.7B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. The notice of appointment must be in the form specified in the Insolvency Rules 1986, SI 1986/1925, rr 2.19, 12.7, Sch 4 Form 2.7B (as substituted) (r 2.19(1) (as so substituted)), and must be faxed to a designated telephone number which must be provided by the Court Service for that purpose (r 2.19(3) (as so substituted)). The Secretary of State must publish the telephone number of the relevant fax machine on the Insolvency Service website and it must be available in writing on request made to the Insolvency Service: see r 2.19(3) (as so substituted). The appointor must ensure that a fax transmission report detailing the time and date of the fax transmission and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the form (r 2.19(4) (as so substituted)), and must notify the administrator as soon as reasonably practicable that the notice has been filed (r 2.19(5) (as so substituted)). The copy of the faxed notice of appointment received by the Court Service fax machine must be forwarded as soon as reasonably practicable to the court specified in the notice as the court having jurisdiction in the case, to be placed on the relevant court file: r 2.19(6) (as so substituted). See also the text and note 9 infra. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post. As to the Secretary of State see para 11 note 10 ante.

6 Ie filed in accordance with *ibid* r 2.16 (as substituted) (see para 232 ante).

7 *Ibid* r 2.19(2) (as substituted: see note 5 supra).

8 *Ibid* r 2.19(5) (as substituted: see note 5 supra).

9 Where any question arises in respect of the date and time that the notice of appointment was filed with the court, it is to be a presumption capable of rebuttal that the date and time shown on the appointor's fax transmission report is the date and time at which the notice was so filed: *ibid* r 2.19(11) (as substituted: see note 5 *supra*).

10 *Ie* listed on *ibid* Sch 4 Form 2.7B (as substituted) (see note 5 *supra*).

11 *Ibid* r 2.19(7) (as substituted: see note 5 *supra*). The administrator's appointment ceases to have effect if the requirements of r 2.19(7) (as substituted) are not completed within the time period indicated therein: r 2.19(10) (as so substituted).

12 As to the meaning of 'company' see para 212 note 1 *ante*.

13 Insolvency Rules 1986, SI 1986/1925, r 2.19(8) (as substituted: see note 5 *supra*).

14 *Ibid* r 2.19(9) (as substituted: see note 5 *supra*).

15 *Ibid* r 2.19(12) (as substituted: see note 5 *supra*).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

233 Appointment taking place out of court business hours

TEXT AND NOTES--SI 1986/1925 r 2.19 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/234. Commencement and notification of appointment.

234. Commencement and notification of appointment.

The appointment of an administrator¹ takes effect when the requirements relating to the giving of notices of appointment² are satisfied³, and a person who appoints an administrator must notify the administrator as soon as is reasonably practicable after those requirements have been satisfied⁴.

Where an administrator is appointed under these provisions and the charge-holder making the appointment has previously received notice that an administration application⁵ has been made, he must as soon as reasonably practicable send a copy of the notice of appointment to the person making the administration application and to the court⁶ in which the application has been made⁷.

1 le under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 ante). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 le the requirements of ibid Sch B1 para 18 (as added) (see para 232 ante).

3 Insolvency Act 1986 s 8, Sch B1 para 19 (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. See *Flitex Ltd v Hogg* [2004] EWHC 1280 (Ch).

4 Insolvency Act 1986 Sch B1 para 20(a) (as added: see note 3 supra). A person who fails without reasonable excuse to comply with this requirement commits an offence punishable on indictment by a term of imprisonment not exceeding two years, or a fine, or both, and is punishable summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum, or both: s 430, Sch B1 para 106 (as added: see note 3 supra), Sch 10 (as amended: see note 3 supra). As to the statutory maximum see para 10 note 1 ante.

5 For the meaning of 'administration application' see para 216 ante.

6 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

7 Insolvency Act 1986 Sch B1 para 20(a) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.18 (substituted by SI 2003/1730). The Insolvency Act 1986 Sch B1 para 20(a) (as added) makes provision for the notification of such other persons as may be prescribed. As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/B. APPOINTMENT OF ADMINISTRATOR BY HOLDER OF QUALIFYING FLOATING CHARGE/235. Indemnity for invalid appointment.

235. Indemnity for invalid appointment.

Where a person purports to appoint an administrator¹, and the appointment is discovered to be invalid, the court² may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity³.

¹ See under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 ante). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

² For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

³ Insolvency Act 1986 s 8, Sch B1 para 21 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/236. Appointment of administrator by company or directors.

C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

236. Appointment of administrator by company or directors.

A company, or the directors of a company, may appoint an administrator¹ unless:

- 460 (1) a petition for the winding up of the company has been presented and is not yet disposed of²;
- 461 (2) an administration application³ has been made and is not yet disposed of⁴; or
- 462 (3) an administrative receiver⁵ of the company is in office⁶.

These powers may not be exercised for the period of 12 months beginning with:

- 463 (a) if an administrator of the company has already been appointed⁷, the date on which the earlier appointment ceases to have effect⁸;
- 464 (b) if a moratorium for a company⁹ ends on a date when no voluntary arrangement¹⁰ is in force in respect of the company, that date¹¹;
- 465 (c) if a voluntary arrangement in respect of the company was made during a moratorium and ends prematurely¹², the date on which the arrangement ends¹³.

The provisions enabling a company or its directors to appoint an administrator¹⁴ do not apply in relation to insurers¹⁵.

1 Insolventy Act 1986 s 8, Sch B1 paras 2(c), 22 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. In any instrument made before 15 September 2003, a reference to the making of an administration order is to be treated as including a reference to the appointment of an administrator under Sch B1 para 22 (as added) or Sch B1 para 14 (as added) (see para 228 ante), and a reference to making an application for an administration order by petition is to be treated as including a reference to, inter alia, appointing an administrator under Sch B1 para 22 (as added) or Sch B1 para 14 (as added): Enterprise Act 2002 s 248(3), Sch 17 para 1.

A reference in the Insolventy Act 1986 Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: Sch B1 para 105 (as so added).

2 Ibid Sch B1 para 25(a) (as added: see note 1 supra).

3 For the meaning of 'administration application' see para 216 ante.

4 Insolventy Act 1986 Sch B1 para 25(b) (as added: see note 1 supra).

5 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by ibid Sch B1 para 111(1) (as added: see note 1 supra). As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

6 Ibid Sch B1 para 25(c) (as added: see note 1 supra).

7 le under these provisions (see *ibid* Sch B1 para 22 (as added); and the text and note 1 *supra*) or by the court on an administration application made by the company or its directors (see para 215 *et seq ante*): Sch B1 para 23(1)(a), (b) (as added: see note 1 *supra*).

8 *Ibid* Sch B1 para 23(2) (as added: see note 1 *supra*). As to the amendment of provisions concerning time-periods see para 228 note 4 *ante*.

9 le under *ibid* Sch A1 (as added) (see para 73 *et seq ante*): Sch B1 para 24(1) (as added: see note 1 *supra*).

10 For the meaning of 'voluntary arrangement' see para 71 *ante*.

11 Insolvency Act 1986 Sch B1 para 24(1), (3) (as added: see note 1 *supra*).

12 le within the meaning of *ibid* s 7B (as added) (see para 74 note 15 *ante*): Sch B1 para 24(2)(b) (as added: see note 1 *supra*).

13 *Ibid* Sch B1 para 24(2), (3) (as added: see note 1 *supra*).

14 le *ibid* Sch B1 para 22 (as added) (see the text and note 1 *supra*).

15 Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3 (amended by SI 2004/353).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

236 Appointment of administrator by company or directors

NOTE 2--The reference to the presentation of a petition means its delivery to the court or its filing, even though that date may be well in advance of the date when the petition is sealed and issued: *Re Blights Builders Ltd* [2006] EWHC 3549 (Ch), [2007] 3 All ER 776.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/237. Notice of intention to appoint.

237. Notice of intention to appoint.

A person who proposes to make a company¹ or directors' appointment² must give at least five business days³ written⁴ notice⁵, identifying the proposed administrator⁶, to:

- 466 (1) any person who is or may be entitled to appoint an administrative receiver⁷ or administrator⁸ of the company⁹;
- 467 (2) any enforcement or other officer¹⁰ who, to the knowledge of the person giving the notice, is charged with execution or other legal process against the company¹¹;
- 468 (3) any person who, to the knowledge of the person giving the notice, has distrained against the company or its property¹²;
- 469 (4) any supervisor of a voluntary arrangement¹³; and
- 470 (5) the company, if the company is not intending to make the appointment¹⁴.

There is no requirement to give a notice where no person is entitled to one under these provisions¹⁵.

Service of the notice of intention to appoint must be effected:

- 471 (a) on the company, by delivering the documents to its registered office¹⁶ or, if that is not practicable, by delivery to its last known principal place of business in England and Wales¹⁷;
- 472 (b) on any other person, by delivering the documents to his proper address¹⁸,

or, in either case, in such other manner as the court may direct¹⁹. Delivery of documents to any place or address may be made by leaving them there, or sending them by first class post²⁰.

The notice of intention to appoint must be accompanied by either a copy of the resolution of the company to appoint an administrator (where the company intends to make the appointment) or a record of the decision of the directors (where the directors intend to make the appointment)²¹.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 Ie an appointment under the Insolvency Act 1986 Sch B1 para 22 (as added) (see para 236 ante).

3 For the meaning of 'business day' see para 228 note 4 ante. As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

4 As to things in writing see para 228 note 5 ante.

5 The notice of intention to appoint under the Insolvency Act 1986 Sch B1 para 22 (as added) must be in the form specified in the Insolvency Rules 1986, SI 1986/1925, r 2.20, Sch 4 Form 2.8B (as substituted): Insolvency Act 1986 s 8, Sch B1 para 26(3)(b) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16); Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.20(1) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.8, 2.20, 2.22, Sch 4 Form 2.8B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. In any instrument made before 15 September 2003 (see para 145 ante), a reference to making an application for an administration order by petition is to be treated as including a reference to, inter

alia, giving notice under the Insolvency Act 1986 Sch B1 para 26 (as added) or Sch B1 para 15 (as added) (see para 228 ante); Enterprise Act 2002 s 248(3), Sch 17 para 1(b).

6 Insolvency Act 1986 Sch B1 para 26(3)(a) (as added: see note 5 supra).

7 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by ibid Sch B1 para 111(1) (as added: see note 5 supra). As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

8 le appoint an administrator under ibid Sch B1 para 14 (as added) (see para 228 et seq ante).

9 Ibid Sch B1 para 26(1) (as added: see note 5 supra).

10 The Insolvency Rules 1986, SI 1986/1925, r 2.20(2)(a) (as substituted) refers to 'a sheriff' for these purposes but, by virtue of amendments made by the Courts Act 2003 (see eg the Insolvency Act 1986 s 184; and para 884 post), this should be read as referring to an enforcement or other officer.

11 Ibid Sch B1 para 26(2) (as added: see note 5 supra); Insolvency Rules 1986, SI 1986/1925, r 2.20(2)(a) (as substituted: see note 5 supra). The Insolvency Act 1986 Sch B1 para 26(2) (as added) makes provision for the notification of such other persons as may be prescribed.

12 Insolvency Rules 1986, SI 1986/1925, r 2.20(2)(b) (as substituted: see note 5 supra).

13 Ibid r 2.20(2)(c) (as substituted: see note 5 supra). The reference in the text to a voluntary arrangement is to a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante); Insolvency Rules 1986, SI 1986/1925, r 2.20(2)(c) (as so substituted).

14 Ibid r 2.20(2)(d) (as substituted: see note 5 supra).

15 See the Insolvency Act 1986 Sch B1 para 26(2) (as added: see note 5 supra).

16 Insolvency Rules 1986, SI 1986/1925, rr 2.8(2)(a), 2.20(3) (as substituted: see note 5 supra).

17 Ibid r 2.8(3) (as substituted: see note 5 supra).

18 Ibid r 2.8(2)(b) (as substituted: see note 5 supra). For these purposes, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address: r 2.8(4) (as so substituted). However, in the case of a person who: (1) is an authorised deposit-taker or former authorised deposit-taker; (2) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, or is, or may be, entitled to appoint an administrator of the company under the Insolvency Rules 1986, SI 1986/1925, Sch B1 para 14 (as added) (see para 228 ante); and (3) has not notified an address for service, the proper address is the address of an office of that person where, to the knowledge of the applicant, the company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address: r 2.8(5) (as so substituted). For the meanings of 'authorised deposit-taker' and 'former authorised deposit-taker' see para 460 notes 18, 19 post.

19 Ibid r 2.8(2)(c) (as substituted: see note 5 supra).

20 Ibid r 2.8(6) (as substituted: see note 5 supra).

21 Ibid r 2.22 (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

237 Notice of intention to appoint

NOTE 5--SI 1986/1925 Sch 4 Form 2.8B further substituted: SI 2005/527.

NOTE 10--The reference to a sheriff is now to an enforcement officer: SI 1986/1925 r 2.20(2)(a) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/238. Filing notice of intention to appoint with the court.

238. Filing notice of intention to appoint with the court.

A person who gives notice of intention to appoint an administrator¹ must file with the court² as soon as is reasonably practicable a copy of the notice³ and any document accompanying it⁴. This copy must be accompanied by a statutory declaration⁵ made by or on behalf of the person who proposes to make the appointment:

- 473 (1) that the company⁶ is or is likely to become unable to pay its debts⁷;
- 474 (2) that the company is not in liquidation⁸;
- 475 (3) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by statute⁹; and
- 476 (4) to such additional effect, and giving such information, as may be prescribed¹⁰.

1 le under the Insolvency Act 1986 Sch B1 para 26 (as added) (see para 237 ante). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 Insolvency Act 1986 s 8, Sch B1 para 27(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 Insolvency Act 1986 Sch B1 para 27(1)(b) (as added: see note 3 supra). As to the notice of intention to appoint and the documents required to accompany it see para 237 ante.

5 The statutory declaration must be in the form set out in the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.8B (as substituted) and must be made not more than five business days before the form is filed with the court (the 'prescribed period'): Insolvency Act 1986 Sch B1 para 27(3) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.21 (r 2.21, Sch 4 Form 2.8B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'business day' see para 228 note 4 ante. A person commits an offence if in a statutory declaration he makes a statement which is false and which he does not reasonably believe to be true: Insolvency Act 1986 Sch B1 para 27(4) (as so added). The offence is punishable on indictment by a term of imprisonment not exceeding two years, or a fine, or both, and is punishable summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum, or both: s 430, Sch B1 para 106(1) (as so added), Sch 10 (as added: see note 3 supra). As to the statutory maximum see para 10 note 1 ante.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 Insolvency Act 1986 Sch B1 para 27(2)(a) (as added: see note 3 supra). For the meaning of 'unable to pay its debts' see para 147 note 4 ante; definition applied by Sch B1 para 111(1) (as so added).

8 Ibid Sch B1 para 27(2)(b) (as added: see note 3 supra).

9 Ibid Sch B1 para 27(2)(c) (as added: see note 3 supra). The reference in the text to an appointment being prevented by statute is a reference to its being prevented by Sch B1 paras 23-25 (as added) (see para 236 ante); Sch B1 para 27(2)(c) (as so added).

10 Ibid Sch B1 para 27(2)(d) (as added: see note 3 supra). 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. At the date at which this volume states the law no such additional effect or further information had been prescribed.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

238 Filing notice of intention to appoint with the court

NOTE 5--SI 1986/1925 Sch 4 Form 2.8B further substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/239. Interim moratorium.

239. Interim moratorium.

When a copy of a notice of intention to appoint an administrator¹ has been filed with the court²:

- 477 (1) no resolution may be passed for the winding up of the company³;
 - 478 (2) no order may be made for the winding up of the company⁴;
 - 479 (3) an administrative receiver⁵ of the company may not be appointed⁶; and
 - 480 (4) without the court's permission⁷:
- 9
- 15. (a) no step may be taken to enforce security⁸ over the company's property⁹;
 - 16. (b) no step may be taken to repossess goods in the company's possession under a hire-purchase agreement¹⁰;
 - 17. (c) a landlord¹¹ may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company¹²; and
 - 18. (d) no legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company¹³.
- 10

This moratorium on legal process has effect until such time as either the appointment of the administrator takes effect¹⁴ or the period of ten business days¹⁵ beginning with the date of filing of the notice of intention to appoint¹⁶ expires without an administrator having been appointed¹⁷.

These provisions do not prevent or require the permission of the court for the appointment of an administrator¹⁸, the appointment of an administrative receiver of the company, or the carrying out by an administrative receiver (whenever appointed) of his functions¹⁹.

1. See under the Insolvency Act 1986 Sch B1 para 22 (as added). As to the giving and filing of notices of intention to appoint an administrator see paras 237-238 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2. For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3. Insolvency Act 1986 s 8, Sch B1 paras 42(2), 44(4), (5) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the meaning of 'company' see para 212 note 1 ante.

4. Ibid Sch B1 para 42(3) (as added: see note 3 supra). This does not apply to an order made on a petition presented under s 124A (as added and amended) (petition for winding-up in grounds of public interest: see para 444 post) or the Financial Services and Markets Act 2000 s 367 (winding-up by the court: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497): Insolvency Act 1986 Sch B1 paras 42(4), 44(7)(a) (as so added). If a petition presented under one of these provisions comes to the attention of the administrator, he must apply to the court for directions under Sch B1 para 63 (as added) (see para 312 post): Sch B1 para 42(5) (as so added). As to the making of applications see para 1055 et seq post.

5. As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by ibid Sch B1 para 111(1) (as added: see note 3 supra). As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

6 Ibid Sch B1 paras 43(6A), 44(5) (Sch B1 as added (see note 3 supra); Sch B1 para 43(6A) added by Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 2(1), (3)).

7 Where the court gives permission for a transaction under heads (a)-(d) in the text, it may impose a condition or a requirement in connection with the transaction: Insolvency Act 1986 Sch B1 para 43(7) (as so added).

8 For the meaning of 'security' see para 109 note 10 ante.

9 Insolvency Act 1986 Sch B1 para 43(2)(b) (as added: see note 3 supra). As to the meaning of 'property' see para 489 note 8 post.

10 Ibid Sch B1 para 43(3)(b) (as added: see note 3 supra). As to the meaning of 'hire-purchase agreement' see para 224 note 12 ante.

11 As to the meaning of 'landlord' see para 224 note 13 ante.

12 Insolvency Act 1986 Sch B1 para 43(4)(b) (as added: see note 3 supra).

13 Ibid Sch B1 para 43(6)(b) (as added: see note 3 supra).

14 Ibid Sch B1 para 44(4)(a) (as added: see note 3 supra).

15 For the meaning of 'business day' see para 228 note 4 ante.

16 Ie the period specified in the Insolvency Act 1986 Sch B1 para 28(2) (as added) (see para 240 post).

17 Ibid Sch B1 para 44(4)(b) (as added: see note 3 supra).

18 Ie under ibid Sch B1 para 14 (as added) (see para 228 ante).

19 Ibid Sch B1 para 44(7)(b)-(d) (as added: see note 3 supra). See also note 4 supra.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/240. Making the appointment.

240. Making the appointment.

Unless there is no person who is entitled to notice of intention to appoint an administrator¹, a person who wishes to make a company² or directors' appointment³ may make the appointment provided:

- 481 (1) he has complied with the requirements as to the giving and filing of notices of intention to appoint⁴;
- 482 (2) the notice period for the giving of such notices⁵ has expired⁶;
- 483 (3) each person to whom notice has been given⁷ has consented in writing⁸ to the making of the appointment⁹.

An appointment may not however be made after the period of ten business days¹⁰ beginning with the date on which the notice of intention to appoint is filed¹¹, and an appointment will not take effect if the company enters administration¹² by virtue of an administration order¹³ or an appointment of an administrator by the holder of a qualifying floating charge¹⁴ before the requirements relating to the giving of a notice of appointment¹⁵ have been satisfied¹⁶.

1 The Insolvency Act 1986 Sch B1 para 28 (as added) does not apply where there is no person who is entitled to notice of intention to appoint: s 8, Sch B1 para 30 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. See para 237 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Ie an appointment under the Insolvency Act 1986 Sch B1 para 22 (as added) (see para 236 ante).

4 Ie any requirement of ibid Sch B1 paras 26, 27 (as added) (see paras 237-238 ante): Sch B1 para 28(1) (as added: see note 1 supra).

5 Ie the period of notice specified in ibid Sch B1 para 26(1) (as added) (see para 237 ante): Sch B1 para 28(1)(a) (as added: see note 1 supra).

6 Ibid Sch B1 para 28(1)(a) (as added: see note 1 supra).

7 Ie under ibid Sch B1 para 26(1) (as added): Sch B1 para 28(1)(b) (as added: see note 1 supra).

8 As to the meaning of 'writing' see para 228 note 5 ante.

9 Insolvency Act 1986 Sch B1 para 28(1)(b) (as added: see note 1 supra).

10 For the meaning of 'business day' see para 228 note 4 ante. As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

11 Insolvency Act 1986 Sch B1 para 28(2) (as added: see note 1 supra).

12 For the meaning of 'enters administration' see para 212 note 1 ante.

13 For the meaning of 'administration order' see para 212 ante.

14 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the appointment of administrators by charge-holders see the Insolvency Act 1986 Sch B1 para 14 (as added); and para 228 et seq ante.

15 Ie the requirements of ibid Sch B1 para 29 (as added) (see para 241 post).

16 Ibid Sch B1 para 33(a) (as added: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/241. Notice of appointment.

241. Notice of appointment.

A person who makes a company¹ or directors' appointment² must file a notice of appointment with the court³. The notice must:

- 484 (1) be in the prescribed form⁴;
- 485 (2) include a statutory declaration⁵ by or on behalf of the person who makes the appointment:
- 11
 - 19. (a) that the person is entitled to make the appointment⁶;
 - 20. (b) that the appointment is in accordance with the relevant statutory provisions⁷;
 - 21. (c) where a notice of intention to appoint has been given⁸, that so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate⁹; and
 - 22. (d) where a notice of intention to appoint has not been given, that the company is or is likely to become unable to pay its debts¹⁰, that the company is not in liquidation¹¹, that, so far as the person making the statement is able to ascertain, the appointment is not prevented by statute¹², and to such additional effect, and giving such information, as may be prescribed¹³; and
- 12
 - 486 (3) identify the administrator¹⁴.

The notice of appointment must also be accompanied by a statement by the administrator¹⁵ that he consents to the appointment¹⁶, that in his opinion the purpose of administration¹⁷ is reasonably likely to be achieved¹⁸, and giving such other information and opinions as may be prescribed¹⁹. Where a notice of intention to appoint has not been given, the notice of appointment must also be accompanied by either a copy of the resolution of the company to appoint an administrator (where the company intends to make the appointment) or a record of the decision of the directors (where the directors intend to make the appointment)²⁰.

Three copies of the notice of appointment must be filed with the court²¹, and must be accompanied by:

- 487 (i) the administrator's written statement²²;
- 488 (ii) the written consent of those persons to whom notice of intention to appoint was given²³ (unless the notice period²⁴ has expired)²⁵; and
- 489 (iii) a statement of those matters provided for where a number of persons are appointed to act as administrators²⁶, if applicable²⁷.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 ie an appointment under the Insolvency Act 1986 Sch B1 para 22 (as added) (see para 236 ante).

3 Insolvency Act 1986 s 8, Sch B1 para 29(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

4 See the Insolvency Act 1986 Sch B1 para 29(5) (as added: see note 3 supra); and the Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.23(1), 12.7, Sch 4 Forms 2.9B, 2.10B (rr 2.1, 2.22-2.26, Sch 4 Forms 2.2B, 2.9B, 2.10B substituted by SI 2003/1730). Form 2.9B (as substituted) is for notice of appointment of an administrator by the company or directors where a notice of intention to appoint has been issued; and Form 2.10B (as substituted) is for notice of appointment of an administrator by the company or directors where a notice of intention to appoint has not been issued. As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 A statutory declaration under the Insolvency Act 1986 Sch B1 para 29(2) (as added) is also required to be in the form set out in the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.9B (as substituted) (see note 4 supra) and must be made not more than five business days before the form is filed with the court (the 'prescribed period'): Insolvency Act 1986 Sch B1 para 29(6) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.24 (as substituted: see note 4 supra). For the meaning of 'business day' see para 228 note 4 ante.

A person commits an offence if in a statutory declaration he makes a statement which is false and which he does not reasonably believe to be true: Insolvency Act 1986 Sch B1 para 29(7) (as added: see note 3 supra). The offence is punishable on indictment by a term of imprisonment not exceeding two years, or a fine, or both, and is punishable summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum, or both: s 430, Sch B1 para 106(1) (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum see para 10 note 1 ante.

6 Ibid Sch B1 para 29(2)(a) (as added: see note 3 supra).

7 Ibid Sch B1 para 29(2)(b) (as added: see note 3 supra). The relevant statutory provisions are the provisions of Sch B1 (as added): Sch B1 para 18(2)(c) (as so added).

8 There is no requirement to give a notice of intention to appoint where no person is entitled to one under ibid Sch B1 para 26(1) (as added): see Sch B1 para 30 (as added: see note 3 supra). See also para 237 ante.

9 Ibid Sch B1 paras 29(2)(c), 30(b) (as added: see note 3 supra).

10 Ibid Sch B1 paras 27(2)(a), 30(a) (as added: see note 3 supra). For the meaning of 'unable to pay its debts' see para 147 note 4 ante; definition applied by Sch B1 para 111(1) (as so added).

11 Ibid Sch B1 para 27(2)(b) (as added: see note 3 supra).

12 Ibid Sch B1 para 27(2)(c) (as added: see note 3 supra). The reference in the text to an appointment being prevented by statute is a reference to its being prevented by Sch B1 paras 23-25 (as added) (see para 236 ante): Sch B1 para 27(2)(c) (as so added).

13 Ibid Sch B1 para 27(2)(d) (as added: see note 3 supra). 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. At the date at which this volume states the law no such additional effect or further information had been prescribed.

14 Ibid Sch B1 para 29(3) (as added: see note 3 supra). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

15 The statement must be in writing: Insolvency Rules 1986, SI 1986/1925, r 2.23(2)(a) (as substituted: see note 4 supra). See, however, para 228 note 5 ante. It must be in the form set out in Sch 4 Form 2.2B (as substituted): r 2.23(2)(a) (as so substituted). For the purpose of the statement, the administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy): Insolvency Act 1986 Sch B1 para 29(4) (as added: see note 3 supra).

16 Ibid Sch B1 para 18(3)(a) (as added: see note 3 supra).

17 For the meaning of 'the purpose of administration' see para 214 ante.

18 Insolvency Act 1986 Sch B1 para 18(3)(b) (as added: see note 3 supra).

19 Ibid Sch B1 para 18(3)(c) (as added: see note 3 supra).

20 Insolvency Rules 1986, SI 1986/1925, rr 2.22, 2.25 (as substituted: see note 4 supra).

21 Ibid r 2.26(1) (as substituted: see note 4 supra). Those copies must have applied to them the seal of the court and be endorsed with the date and time of filing: r 2.26(1) (as so substituted). The court must issue two of the sealed copies of the notice of appointment to the person making the appointment, who must as soon as reasonably practicable send one of the sealed copies to the administrator: r 2.26(2) (as so substituted).

22 Insolvency Act 1986 Sch B1 para 29(1)(b) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.23(2)(a) (as substituted: see note 4 supra). The Insolvency Act 1986 Sch B1 para 29(1)(b) (as added) provides that such other documents as may be prescribed may be filed with the court with the notice of appointment.

23 As to the giving of the notice of intention to appoint see ibid Sch B1 para 26(1) (as added); and para 237 ante.

24 Ie the period specified in ibid Sch B1 para 26(1) (as added): see para 237 ante.

25 Insolvency Rules 1986, SI 1986/1925, r 2.23(2)(b) (as substituted: see note 4 supra).

26 Ie provided for in the Insolvency Act 1986 Sch B1 para 100(2) (as added) (see para 259 post): Insolvency Rules 1986, SI 1986/1925, r 2.23(2)(c) (as substituted: see note 4 supra).

27 Ibid r 2.23(2)(c) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/242. Commencement and notification of appointment.

242. Commencement and notification of appointment.

Unless the company¹ enters administration² by virtue of an administration order³ or the appointment of an administrator⁴ by the holder of a qualifying floating charge⁵ before the requirements relating to the giving of a notice of appointment⁶ are satisfied⁷ (in which case these provisions do not apply⁸), the appointment of an administrator by a company or its directors⁹ takes effect when those requirements are satisfied¹⁰. A person who so appoints an administrator must notify the administrator and such other persons as may be prescribed¹¹ as soon as is reasonably practicable after the requirements are satisfied¹².

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'enters administration' see para 212 note 1 ante.

3 For the meaning of 'administration order' see para 212 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

5 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the appointment of administrators by charge-holders see the Insolvency Act 1986 Sch B1 para 14 (as added); and para 228 et seq ante.

6 I.e. the requirements of ibid Sch B1 para 29 (as added) (see para 241 ante): s 8, Sch B1 para 31 (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

7 In these circumstances no appointment may be made by the company or directors: see the Insolvency Act 1986 Sch B1 para 33(a) (as added: see note 6 supra). See also para 240 ante.

8 Ibid Sch B1 para 33(b) (as added: see note 6 supra).

9 I.e. an appointment under ibid Sch B1 para 22 (as added) (see para 236 ante). A reference in Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: Sch B1 para 105 (as added: see note 6 supra).

10 Ibid Sch B1 para 31 (as added: see note 6 supra).

11 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. At the date at which this volume states the law no persons had been prescribed for these purposes.

12 Ibid Sch B1 para 32(a) (as added: see note 6 supra). Failure to comply with this requirement is an offence punishable on indictment by a term of imprisonment not exceeding two years, or a fine, or both, or summarily by a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum, or both, and on conviction after continued contravention by a daily default fine not exceeding one-tenth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 6 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/C. APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS/243. Indemnity for invalid appointment.

243. Indemnity for invalid appointment.

Where a company or its directors purport to appoint an administrator¹, and the appointment is discovered to be invalid, the court² may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity³.

1 le under the Insolvency Act 1986 Sch B1 para 22 (as added) (see para 236 ante). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post. A reference in Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: s 8, Sch B1 para 105 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16).

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 Insolvency Act 1986 Sch B1 para 34 (as added: see note 1 supra). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(A) Resignation of Administrator/244. Grounds for resignation of administrator.

D. TENURE OF OFFICE

(A) RESIGNATION OF ADMINISTRATOR

244. Grounds for resignation of administrator.

An administrator¹ may resign only:

- 490 (1) on grounds of ill health²;
- 491 (2) because he intends ceasing to be in practice as an insolvency practitioner³;
- 492 (3) because there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator⁴; or
- 493 (4) on other grounds, with the permission of the court⁵.

A company does not cease to be in administration merely because an administrator resigns his office⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 Insolvency Act 1986 s 8, Sch B1 para 87(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16); Insolvency Rules 1986, SI 1986/1925, r 2.119(1) (r 2.119 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.119(1)(a) (as substituted: see note 2 supra).

4 Ibid r 2.119(1)(b) (as substituted: see note 2 supra).

5 Ibid r 2.119(2) (as substituted: see note 2 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 See the Insolvency Act 1986 Sch B1 para 2(d) (as added: see note 2 supra). See also para 363 post. For the meaning of 'in administration' see para 214 note 4 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(A) Resignation of Administrator/245. Notice of intention to resign.

245. Notice of intention to resign.

Where an administrator¹ may resign² he may do so only:

- 494 (1) in the case of an administrator appointed by administration order³, by notice in writing⁴ to the court⁵;
- 495 (2) in the case of an administrator appointed by the holder of a qualifying floating charge⁶, by notice in writing to the charge-holder by virtue of which the appointment was made⁷;
- 496 (3) in the case of an administrator appointed by the company⁸, by notice in writing to the company⁹; or
- 497 (4) in the case of an administrator appointed by the directors¹⁰, by notice in writing to the directors of the company¹¹.

The administrator must in all cases give at least seven days' notice in the specified form¹² of his intention to resign, or to apply for the court's permission to do so, to:

- 498 (a) a continuing administrator of the company (if there is one)¹³; and
- 499 (b) a creditors' committee¹⁴ (if there is one)¹⁵; or
- 500 (c) the company and its creditors (if there is no continuing administrator and no creditors' committee)¹⁶.

Where the administrator gives notice under these provisions, he must also give notice to a member state liquidator¹⁷, if such a person has been appointed in relation to the company¹⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the circumstances in which an administrator may resign see para 244 ante.

3 For the meaning of 'administration order' see para 212 ante.

4 As to the meaning of 'writing' see para 228 note 5 ante.

5 Insolvency Act 1986 s 8, Sch B1 para 87(2)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 Ie appointed under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

7 Ibid Sch B1 para 87(2)(b) (as added (see note 5 supra); and amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 2(1), (4)). Where the administrator was appointed by the holder of a qualifying floating charge, the notice of intention to resign must also be sent to all holders of prior qualifying floating charges (see para 228 note 7 ante) and to the person who appointed the administrator: Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.120(3) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.120, Sch 4 Form 2.37B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note

10 ante. A copy of the notice must also be sent to the holder of the floating charge by virtue of which the appointment was made: Insolvency Rules 1986, SI 1986/1925, r 2.120(3) (as so substituted).

8 le appointed under the Insolvency Act 1986 Sch B1 para 22(1) (as added) (see para 236 et seq ante). As to the meaning of 'company' see para 212 note 1 ante.

9 Ibid Sch B1 para 87(2)(c) (as added: see note 5 supra). Where the administrator was appointed by the company or the directors of the company, a copy of the notice of intention to resign must also be sent to the appointor and all holders of a qualifying floating charge: Insolvency Rules 1986, SI 1986/1925, r 2.120(4) (as substituted: see note 7 supra).

10 le appointed under the Insolvency Act 1986 Sch B1 para 22(2) (as added) (see para 236 et seq ante).

11 Ibid Sch B1 para 87(2)(d) (as added: see note 5 supra). See further note 9 supra.

12 As to the form see the Insolvency Rules 1986, SI 1986/1925, r 2.120(1), Sch 4 Form 2.37B (as substituted: see note 7 supra).

13 Ibid r 2.120(1)(a) (as substituted: see note 7 supra).

14 As to creditors' committees see para 298 et seq post.

15 Insolvency Rules 1986, SI 1986/1925, r 2.120(1)(b) (as substituted: see note 7 supra).

16 Ibid r 2.120(1)(c) (as substituted: see note 7 supra).

17 For the meaning of 'member state liquidator' see para 460 note 15 post.

18 Insolvency Rules 1986, SI 1986/1925, r 2.120(2) (as substituted: see note 7 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(A) Resignation of Administrator/246. Notice of resignation.

246. Notice of resignation.

The notice of resignation must be in the specified form¹. Where the administrator² was appointed under an administration order³, the notice must be filed with the court⁴, and a copy sent to the registrar of companies⁵. Where the administrator was appointed by the holder of a qualifying floating charge⁶ or by the company⁷ or the directors⁸, a copy of the notice of resignation must be filed with the court and sent to the registrar of companies within five business days⁹ of the notice of resignation being sent to the holder of the floating charge by virtue of which the appointment was made or, as the case may be, the company or the directors that made the appointment¹⁰. In all cases, a copy of the notice of resignation must be sent, within five business days of the notice being filed with the court or sent to the appropriate persons, to anyone else who received a copy of the notice of intention to resign¹¹.

1 As to the form see the Insolvency Rules 1986, SI 1986/1925, r 2.121(1), Sch 4 Form 2.38B (rr 2.1(2), 2.121, Form 2.38B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

3 For the meaning of 'administration order' see para 212 ante.

4 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.121(2) (as substituted: see note 1 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

6 Ie appointed under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

7 As to the meaning of 'company' see para 212 note 1 ante.

8 Ie appointed under the Insolvency Act 1986 Sch B1 para 22(1) (as added) (see para 236 et seq ante).

9 For the meaning of 'business day' see para 113 note 4 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.121(3), (4) (as substituted: see note 1 supra).

11 Ibid r 2.121(2)-(4) (as substituted: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(B) Removal of Administrator from Office/247. Removal of an administrator from office.

(B) REMOVAL OF ADMINISTRATOR FROM OFFICE

247. Removal of an administrator from office.

The court¹ may by order remove an administrator² from office³. Any application to remove the administrator must state the grounds on which it is requested that he should be removed⁴. Service of the notice of the application must be effected on the administrator, the person who made the application for the administration order⁵ or appointed the administrator, the creditors' committee⁶ (if any), the joint administrator⁷ (if any), and where there is neither a creditors' committee nor a joint administrator, to the company⁸ and all the creditors, including any floating charge holders⁹, not less than five business days¹⁰ before the date fixed for the application to be heard¹¹.

Where a court makes an order removing the administrator, it must give a copy of the order to the applicant who as soon as reasonably practicable must send a copy to the administrator¹². The applicant must also within five business days of the order being made send a copy of the order to all those to whom notice of the application was sent¹³. A copy of the order must also be sent to the registrar of companies in the specified form¹⁴ within the same time period¹⁵.

A company does not cease to be in administration merely because an administrator is removed from office¹⁶.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

3 Insolvency Act 1986 s 8, Sch B1 para 88 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.122(1) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.122, Sch 4 Form 2.38B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 For the meaning of 'administration order' see para 212 ante.

6 As to creditors' committees see para 298 et seq post.

7 As to joint administrators see para 259-260 post.

8 As to the meaning of 'company' see para 212 note 1 ante.

9 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. Where the appointment was made by the holder of a qualifying floating charge under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante), the notice must also be served on the holder of the floating charge by virtue of which the appointment was made: Insolvency Rules 1986, SI 1986/1925, r 2.122(2) (as substituted: see note 4 supra).

10 For the meaning of 'business day' see para 113 note 4 ante.

11 Insolvency Rules 1986, SI 1986/1925, r 2.122(2) (as substituted: see note 4 supra).

12 Ibid r 2.122(3) (as substituted: see note 4 supra).

13 Ibid r 2.122(4) (as substituted: see note 4 supra).

14 As to the form see ibid r 2.122(5), Sch 4 Form 2.38B (as substituted: see note 4 supra).

15 Ibid r 2.122(5) (as substituted: see note 4 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

16 See the Insolvency Act 1986 Sch B1 para 2(d) (as added: see note 3 supra). See also para 363 post. For the meaning of 'in administration' see para 214 note 4 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(C) Cesser of Qualification/248. Vacation of office on ceasing to be qualified.

(C) CESSER OF QUALIFICATION

248. Vacation of office on ceasing to be qualified.

The administrator¹ of a company² must vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company³. Where an administrator vacates office by virtue of this provision, he must give notice in writing⁴:

- 501 (1) in the case of an administrator appointed by administration order⁵, to the court⁶;
- 502 (2) in the case of an administrator appointed by the holder of a qualifying floating charge⁷, to the charge-holder by virtue of which the appointment was made⁸;
- 503 (3) in the case of an administrator appointed by the company⁹, to the company¹⁰; or
- 504 (4) in the case of an administrator appointed by the directors¹¹, to the directors of the company¹².

An administrator who fails without reasonable excuse to comply with these requirements commits an offence¹³.

Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company gives notice¹⁴, he must also give notice to the registrar of companies in the specified form¹⁵.

A company does not cease to be in administration merely because an administrator vacates office¹⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 89(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to insolvency practitioners and their qualification see para 8 et seq ante.

4 As to the meaning of 'writing' see para 228 note 5 ante.

5 For the meaning of 'administration order' see para 212 ante.

6 Insolvency Act 1986 Sch B1 para 89(2)(a) (as added: see note 3 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

7 Ie appointed under ibid Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

8 Ibid Sch B1 para 89(2)(b) (as added (see note 3 supra); and amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 2(1), (5)).

9 le appointed under the Insolvency Act 1986 Sch B1 para 22(1) (as added) (see para 236 et seq ante). As to the meaning of 'company' see para 212 note 1 ante.

10 Ibid Sch B1 para 89(2)(c) (as added: see note 3 supra).

11 le appointed under ibid Sch B1 para 22(2) (as added) (see para 236 et seq ante).

12 Ibid Sch B1 para 89(2)(d) (as added: see note 3 supra).

13 Ibid Sch B1 para 89(3) (as added: see note 3 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

14 le in accordance with ibid Sch B1 para 89 (as added) (see the text and notes 1-13 supra).

15 Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.123 (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.123, Sch 4 Form 2.39B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.123, Sch 4 Form 2.37B (as so substituted).

16 See the Insolvency Act 1986 Sch B1 para 2(d) (as added: see note 3 supra). See also para 363 post. For the meaning of 'in administration' see para 214 note 4 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(D) Death of Administrator/249. Administrator deceased.

(D) DEATH OF ADMINISTRATOR

249. Administrator deceased.

Where an administrator¹ who is a partner in a firm dies, notice of his death may be given to the court² by a partner in the firm who is qualified to act as an insolvency practitioner³, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners⁴. Notice may also be given by any person producing to the court the relevant death certificate or a copy of it⁵. Subject to this, it is the duty of the deceased's personal representatives to give notice of the death to the court, specifying the date of the death⁶.

Where a person gives notice to the court under this provision, he must also give notice to the registrar of companies in the specified form⁷.

A company does not cease to be in administration merely because an administrator dies⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 As to qualification to act as an insolvency practitioner see para 8 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.124(2) (r 2.124, Sch 4 Form 2.39B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Secretary of State see para 11 note 10 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.124(3) (as substituted: see note 4 supra).

6 Ibid r 2.124(2) (as substituted: see note 4 supra).

7 Ibid r 2.124(4) (as substituted: see note 4 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the specified form see r 2.124(4), Sch 4 Form 2.37B (as so substituted).

8 See the Insolvency Act 1986 s 8, Sch B1 para 2(d) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. See para 363 post. For the meaning of 'in administration' see para 214 note 4 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(E) Effect of Vacation of Office/250. Discharge from liability.

(E) EFFECT OF VACATION OF OFFICE

250. Discharge from liability.

Where a person ceases to be the administrator¹ of a company² because he vacates office³, he is discharged from liability in respect of any action⁴ of his as administrator⁵. Such discharge takes effect:

- 505 (1) in the case of an administrator who dies, on the filing with the court⁶ of notice of his death⁷;
- 506 (2) in the case of an administrator appointed by the holder of a qualifying floating charge⁸, or by the company or directors⁹, at a time appointed by resolution of the creditors' committee¹⁰ or, if there is no committee, by resolution of the creditors¹¹; or
- 507 (3) in any case, at a time specified by the court¹².

Discharge applies to liability accrued before the discharge takes effect¹³ and does not prevent the exercise of the court's powers relating to an administrator's misfeasance¹⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Ie by reason of resignation (see paras 244-246 ante) or death (see para 249 ante) or because he is removed from office (see para 247 ante) or because he ceases to be qualified as an administrator (see para 248 ante): Insolvency Act 1986 s 8, Sch B1 para 98(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 For the meaning of 'action' see para 357 note 3 post.

5 Insolvency Act 1986 Sch B1 para 98(1) (as added: see note 3 supra).

6 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

7 Insolvency Act 1986 Sch B1 para 98(2)(a) (as added: see note 3 supra). As to the filing of notice see para 249 ante.

8 Ie appointed under ibid Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

9 Ie appointed under ibid Sch B1 para 22(1) (as added) (see para 236 et seq ante).

10 As to the creditors' committee see para 298 et seq post.

11 Insolvency Act 1986 Sch B1 para 98(2)(b) (as added: see note 3 supra). If the administrator has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors (ie under Sch B1 para 52(1)(b) (as added): see para 288 post), a resolution must be taken as passed if (and only if) passed with the approval of each secured creditor of the company and, if the administrator has made a

distribution to preferential creditors or thinks that such a distribution may be made, preferential creditors whose debts amount to more than 50% of the preferential debts of the company (disregarding debts of any creditor who does not respond to an invitation to give or withhold approval): Sch B1 para 98(3) (as so added).

12 Ibid Sch B1 para 98(2)(c) (as added: see note 3 supra).

13 Ibid Sch B1 para 98(4)(a) (as added: see note 3 supra).

14 Ibid Sch B1 para 98(4)(b) (as added: see note 3 supra). For the court's powers relating to administrative misfeasance see Sch B1 para 75 (as added); and para 362 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(E) Effect of Vacation of Office/251. Remuneration and expenses.

251. Remuneration and expenses.

Where a person ceases to be the administrator¹ of a company² because he vacates office³, his remuneration and expenses will be:

- 508 (1) charged on and payable out of property⁴ of which he had custody or control immediately before cessation⁵; and
- 509 (2) payable in priority to any security⁶.

A sum payable in respect of a debt or liability⁷ arising out of a contract entered into by the former administrator or a predecessor before cessation, however, will be payable in priority to any such charge⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 He by reason of resignation (see paras 244-246 ante) or death (see para 249 ante) or because he is removed from office (see para 247 ante) or because he ceases to be qualified as an administrator (see para 248 ante): Insolvency Act 1986 s 8, Sch B1 para 99(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 As to the meaning of 'property' see para 489 note 8 post.

5 Insolvency Act 1986 Sch B1 para 99(3)(a) (as added: see note 3 supra). 'Cessation' means the time when the former administrator ceases to be the company's administrator; and 'the former administrator' means the person referred to in Sch B1 para 99(1) (as added) (see the text and notes 1-3 supra): Sch B1 para 99(2) (as so added).

6 Ibid Sch B1 para 99(3)(b) (as added: see note 3 supra). The securities referred to in the text are those to which Sch B1 para 70 (as added) applies (see para 357 post): Sch B1 para 99(2)(b) (as so added).

7 These provisions apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation, and for that purpose: (1) action taken within the period of 14 days after an administrator's appointment will not be taken to amount or contribute to the adoption of a contract (ibid Sch B1 para 99(5)(a) (as added: see note 3 supra)); (2) no account will be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment (Sch B1 para 99(5)(b) (as so added)); and (3) no account will be taken of a liability to make a payment other than wages or salary (Sch B1 para 99(5)(c) (as so added)). For the purposes of Sch B1 para 99(5)(c) (as added), 'wages or salary' includes: (a) a sum payable in respect of a period of holiday (for which purpose the sum will be treated as relating to the period by reference to which the entitlement to holiday accrued) (Sch B1 para 99(6)(a) (as so added)); (b) a sum payable in respect of a period of absence through illness or other good cause (Sch B1 para 99(6)(b) (as so added)); (c) a sum payable in lieu of holiday (Sch B1 para 99(6)(c) (as so added)); (d) in respect of any period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security (Sch B1 para 99(6)(d) (as so added)); and (e) a contribution to an occupational pension scheme (Sch B1 para 99(6)(e) (as so added)). For the meaning of 'action' for these purposes see para 357 note 3 post. As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

8 Ibid Sch B1 para 99(4)(b) (as added: see note 3 supra). Such sums are charged on and payable out of property of which the former administrator had custody or control immediately before cessation: Sch B1 para 99(4)(a) (as so added).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

251 Remuneration and expenses

TEXT AND NOTES 1-6--The former administrator's remuneration and expenses comprises all those items set out in SI 1986/1925 r 2.67(1) (see PARA 379): r 2.67(4) (added by SI 2005/527).

NOTE 7--Administrators are not liable to pay protective awards and payments in lieu of notice in priority to the expenses of the administration: *Krasner v McMath; Duggins v Tipper; Ellis v Harris* [2005] EWCA Civ 1072, [2006] ICR 205. To constitute wages or salary, a payment must relate to an obligation of the employee under a subsisting contract of employment: *Re Leeds United Association Football Club Ltd* [2007] EWHC 1761 (Ch), [2007] Bus LR 1560 (prospective wrongful dismissal payments did not qualify).

NOTE 8--See *Centre Reinsurance International Co v Freakley; Freakley v Centre Reinsurance International Co* [2006] UKHL 45, [2006] 4 All ER 1153 (clause in insurance contract gave insurers exclusive right to handle claims against company in administration; contracts entered into in handling claims were entered into on behalf of company and not administrator, and so expenses so incurred did not have statutory priority).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(E) Effect of Vacation of Office/252. Administrator's duties on vacating office.

252. Administrator's duties on vacating office.

Where the administrator¹ ceases to be in office as such², he is under obligation as soon as reasonably practicable to deliver up to the person succeeding him as administrator the assets (after deduction of any expenses properly incurred and distributions made by him) and further to deliver up to that person:

- 510 (1) the records of the administration, including correspondence³, proofs⁴ and other related papers appertaining to the administration while it was within his responsibility⁵; and
- 511 (2) the company's⁶ books, papers and other records⁷.

If the administrator makes default in complying with this provision, he is liable to a fine and, for continued contravention, he is liable to a daily default fine⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 In consequence of removal (see para 247 ante), resignation (see paras 244-246 ante) or cesser of qualification as an insolvency practitioner (see para 248 ante): Insolvency Rules 1986, SI 1986/1925, r 2.129(1) (r 2.129 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to qualification to act as an insolvency practitioner see para 8 et seq ante.

3 For the meaning of 'correspondence' see para 275 note 12 post.

4 For the meaning of 'proof' see para 323 post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.129(1)(a) (as substituted: see note 2 supra).

6 As to the meaning of 'company' see para 212 note 1 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.129(1)(b) (as substituted: see note 2 supra).

8 Ibid r 2.129(2) (as substituted: see note 2 supra). As to daily default fines see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(F) Filling of Vacancies/253. Filling of vacancy by holder of qualifying floating charge.

(F) FILLING OF VACANCIES

253. Filling of vacancy by holder of qualifying floating charge.

Where there is a vacancy in the office of administrator¹ and the administrator was appointed by the holder of qualifying floating charge², the holder of the floating charge by virtue of which the appointment was made may replace the administrator³.

¹ le in consequence of the administrator's death (see para 249 ante), resignation (see paras 244-246 ante), removal (see para 247 ante) or cesser of qualification (see para 248 ante): Insolvency Act 1986 s 8, Sch B1 para 90 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

² le under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

³ Ibid Sch B1 para 92 (as added: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

253-256 Filling of vacancies

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(F) Filling of Vacancies/254. Filling of vacancy by company or directors.

254. Filling of vacancy by company or directors.

Where there is a vacancy in the office of administrator¹ and the administrator was appointed either by the company² or by the directors³, then either the company or the directors, as the case may be, may replace the administrator⁴. A replacement under these provisions may be made only with the consent of each person who is the holder of a qualifying floating charge⁵ in respect of the company's property⁶ or, where such consent is withheld, with the permission of the court⁷.

1 He is in consequence of the administrator's death (see para 249 ante), resignation (see paras 244-246 ante), removal (see para 247 ante), or cesser of qualification (see para 248 ante): Insolvency Act 1986 s 8, Sch B1 para 90 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 He is appointed under the Insolvency Act 1986 Sch B1 para 22(1) (as added) (see para 236 et seq ante). As to the meaning of 'company' see para 212 note 1 ante.

3 He is appointed under ibid Sch B1 para 22(2) (as added) (see para 236 et seq ante).

4 Ibid Sch B1 paras 93(1), 94(1) (as added: see note 1 supra).

5 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

6 Insolvency Act 1986 Sch B1 paras 93(2)(a), 94(2)(a) (as added: see note 1 supra). As to the meaning of 'property' see para 489 note 8 post.

7 Insolvency Act 1986 Sch B1 paras 93(2)(b), 94(2)(b) (as added: see note 1 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

253-256 Filling of vacancies

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(F) Filling of Vacancies/255. Filling of vacancy by court on application.

255. Filling of vacancy by court on application.

Where there is a vacancy in the office of administrator¹ and the administrator was appointed by administration order², either a creditors' committee³ of the company⁴ or, where more than one person was appointed to act jointly or concurrently⁵ as the administrator, any of those persons who remains in office, may apply to the court⁶ for the administrator to be replaced⁷. If, however, either:

- 512 (1) there is no creditors' committee of the company⁸;
- 513 (2) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement⁹; or
- 514 (3) the court is satisfied that for another reason it is right for the application to be made¹⁰,

then an application for a replacement administrator may be made by the company¹¹, the directors of the company¹², or one or more creditors of the company¹³.

Any of the persons referred to above¹⁴ may apply to the court for the court to appoint a replacement administrator where there is a vacancy, and the court may make such appointment if satisfied:

- 515 (a) that a person who is entitled to replace the administrator¹⁵ is not taking reasonable steps to make a replacement¹⁶; or
- 516 (b) that for another reason it is right for the court to make the replacement¹⁷.

The rules governing the service of applications for the appointment of administrators under administration orders¹⁸ apply to the service of an application to appoint a replacement administrator¹⁹; and the application must also be accompanied by a written statement in the specified form²⁰ by the person proposed to be the replacement administrator²¹. Where the original administrator was appointed by administration order, a copy of the application must be served on the person who made the application for the administration order²². Where the application is made for the court to order a replacement on the grounds that a person who is entitled to replace the administrator is not taking reasonable steps to make a replacement or that for another reason it is right for the court to make the replacement²³, the application must be accompanied by an affidavit setting out the applicant's belief in the matters giving rise to the application²⁴.

The rules governing representation at hearings of applications for the appointment of administrators under administration orders²⁵ and the notification of the making of such orders²⁶ apply to applications for replacement administrators under these provisions²⁷.

1 In consequence of the administrator's death (see para 249 ante), resignation (see paras 244-246 ante), removal (see para 247 ante), or cesser of qualification (see para 248 ante): Insolvency Act 1986 s 8, Sch B1 para 90 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see

para 145 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 For the meaning of 'administration order' see para 212 ante.

3 As to the creditors' committee see para 298 et seq post.

4 As to the meaning of 'company' see para 212 note 1 ante.

5 As to joint or concurrent administrators see para 259-260 post.

6 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

7 Insolvency Act 1986 Sch B1 para 91(1)(a), (e) (as added: see note 1 supra). In relation to insurers only, applications may additionally be made by the Financial Services Authority: Sch B1 para 91(1)(f) (added by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 7). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

8 Insolvency Act 1986 Sch B1 para 91(2)(a) (as added: see note 1 supra).

9 Ibid Sch B1 para 91(2)(b) (as added: see note 1 supra).

10 Ibid Sch B1 para 91(2)(c) (as added: see note 1 supra).

11 Ibid Sch B1 para 91(1)(b), (2) (as added: see note 1 supra).

12 Ibid Sch B1 para 91(1)(c), (2) (as added: see note 1 supra). A reference in Sch B1 (as added) to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company: Sch B1 para 105 (as so added).

13 Ibid Sch B1 para 91(1)(d), (2) (as added: see note 1 supra).

14 Ie a creditors' committee of the company, the company, the directors of the company, one or more creditors of the company or, where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office: ibid Sch B1 para 91(1) (as added: see note 1 supra).

15 Ie under any of ibid Sch B1 paras 92-94 (as added) (see paras 253-254 ante).

16 Ibid Sch B1 para 95(a) (as added: see note 1 supra).

17 Ibid Sch B1 para 95(b) (as added: see note 1 supra).

18 Ie the Insolvency Rules 1986, SI 1986/1925, rr 2.8, 2.9 (as substituted) (see paras 222-223 ante) and (where applicable) r 2.10 (as substituted) (application by holder of qualifying floating charge: see para 226 ante): rr 0.2(1), 2.125(4), (5) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.125, Form 2.2B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

19 Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.125(4), (5) (as substituted: see note 18 supra).

20 As to the specified form see ibid r 2.125(1), Sch 4 Form 2.2B (as substituted: see note 18 supra).

21 Ibid r 2.125(1) (as substituted: see note 18 supra).

22 Ibid r 2.125(2) (as substituted: see note 18 supra).

23 Ie under the Insolvency Act 1986 Sch B1 para 95 (as added) (see the text and notes 15-17 supra).

24 Insolvency Rules 1986, SI 1986/1925, r 2.125(3) (as substituted: see note 18 supra).

25 Ie ibid r 2.12 (as substituted) (see para 225 ante): r 2.125(5) (as substituted: see note 18 supra).

26 Ie ibid r 2.14(1), (2) (as substituted) (see para 226 ante): r 2.125(5) (as substituted: see note 18 supra).

27 Ibid r 2.125(5) (as substituted: see note 18 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

253-256 Filling of vacancies

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(F) Filling of Vacancies/256. Notification and advertisement of appointment of replacement administrator.

256. Notification and advertisement of appointment of replacement administrator.

Where a replacement administrator¹ is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as apply in the case of the original appointment (except that the replacement administrator must additionally send notice of his appointment in the specified form to the registrar of companies²); and all statements, consents etc as are required in the case of the original appointment are also required in the case of the appointment of a replacement³. All forms and notices must clearly identify that the appointment is of a replacement administrator⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 Insolvency Rules 1986, SI 1986/1925, r 2.128 (r 2.128, Form 2.40B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.128, Sch 4 Form 2.40B (as so substituted).

3 Ibid r 2.126 (as substituted: see note 2 supra).

4 Ibid r 2.126 (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

253-256 Filling of vacancies

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

256 Notification and advertisement of appointment of replacement administrator

NOTE 2--SI 1986/1925 Sch 4 Form 2.40B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(G) Substitution of Administrator/257. Substitution of administrator: competing floating charge-holder.

(G) SUBSTITUTION OF ADMINISTRATOR

257. Substitution of administrator: competing floating charge-holder.

Where an administrator¹ of a company² is appointed by the holder of a qualifying floating charge in respect of the company's property³, the holder of a prior qualifying floating charge⁴ in respect of the company's property may apply to the court⁵ for the administrator to be replaced by an administrator nominated by the holder of the prior qualifying charge⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 In the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the meaning of 'property' see para 489 note 8 post.

4 One floating charge is prior to another for these purposes if either it was created first or it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party: Insolvency Act 1986 s 8, Sch B1 para 96(3) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

6 Insolvency Act 1986 Sch B1 para 96(1), (2) (as added: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/D. TENURE OF OFFICE/(G) Substitution of Administrator/258. Substitution of administrator appointed by company or directors.

258. Substitution of administrator appointed by company or directors.

Where an administrator¹ of a company² is appointed by a company or directors³, and there is no holder of a qualifying floating charge in respect of the company's property⁴, a creditors' meeting⁵ may replace the administrator⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see para 259 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 le appointed under the Insolvency Act 1986 Sch B1 para 22 (as added) (see para 236 et seq ante).

4 For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the meaning of 'property' see para 489 note 8 post.

5 As to creditors' meetings see para 275 et seq post.

6 Insolvency Act 1986 s 8, Sch B1 para 97(1), (2) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. A creditors' meeting may act under these provisions only if the new administrator's written consent to act is presented to the meeting before the replacement is made: Insolvency Act 1986 Sch B1 para 97(3) (as so added). As to things in writing see para 228 note 5 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/E. JOINT AND CONCURRENT ADMINISTRATORS/259. Joint and concurrent administrators.

E. JOINT AND CONCURRENT ADMINISTRATORS

259. Joint and concurrent administrators.

Where a company¹ is in administration², a person may be appointed to act as administrator³ jointly or concurrently with the person or persons acting as the administrator of the company⁴. Such an appointment may be made only with the consent of the person or persons acting as the administrator of the company⁵, and is made as follows:

- 517 (1) where a company entered administration⁶ by administration order⁷, the appointment is made by the court⁸ on the application⁹ of: (a) any of the persons who may make an administration application¹⁰; or (b) the person or persons acting as the administrator of the company¹¹;
- 518 (2) where a company entered administration by virtue of an appointment by the holder of a qualifying floating charge¹², the appointment is made by: (a) the holder of the floating charge by virtue of which the appointment was made¹³; or (b) the court on the application of the person or persons acting as the administrator of the company¹⁴;
- 519 (3) where a company entered administration by virtue of an appointment by a company¹⁵, the appointment is made by: (a) the court on the application of the person or persons acting as the administrator of the company¹⁶; or (b) by the company¹⁷;
- 520 (4) where a company entered administration by virtue of an appointment by the directors¹⁸, the appointment is made by: (a) the court on the application of the person or persons acting as the administrator of the company¹⁹; or (b) by the directors of the company²⁰.

Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator, the same rules apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment (except that the additional administrator must additionally send notice of his appointment in the specified form to the registrar of companies)²¹.

The appointment of a number of persons to act as administrator of a company must specify which functions (if any) are to be exercised by the persons appointed acting jointly²², and which functions (if any) are to be exercised by any or all of the persons appointed²³.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'in administration' see para 214 note 4 ante.

3 For the meaning of 'administrator' see para 212 note 1 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 103(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the purposes of the Insolvency Act 1986 Sch B1 (as added), a reference to the appointment of an administrator of a company includes a reference to the

appointment of a number of persons to act jointly or concurrently as the administrator of a company (Sch B1 para 100(1)(a) (as so added)) and a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company (Sch B1 para 100(1)(b) (as so added)). Where two or more persons are appointed to act concurrently as the administrator of a company, a reference to the administrator of a company is a reference to any of the persons appointed (or any combination of them): Sch B1 para 102 (as so added). As to the commission of offences by joint and concurrent administrators see para 260 post.

5 Ibid Sch B1 para 103(6) (as added: see note 4 supra).

6 For the meaning of 'enters administration' see para 212 note 1 ante.

7 For the meaning of 'administration order' see para 212 ante.

8 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

9 As to the making of applications see para 1055 et seq post.

10 Insolvency Act 1986 Sch B1 para 103(2)(a) (as added: see note 4 supra). The reference in the text to the persons who may make an administration application is a reference to any of the persons or groups listed in Sch B1 para 12(1)(a)-(e) (as added and amended) (see para 216 ante): Sch B1 para 103(2)(a) (as so added).

11 Ibid Sch B1 para 103(2)(b) (as added: see note 4 supra).

12 Ie under ibid Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

13 Ibid Sch B1 para 103(3)(a) (as added: see note 4 supra).

14 Ibid Sch B1 para 103(3)(b) (as added: see note 4 supra).

15 Ie appointed under ibid Sch B1 para 22(1) (as added) (see para 236 et seq ante).

16 Ibid Sch B1 para 103(4) (as added: see note 4 supra).

17 Ibid Sch B1 para 103(4)(a) (as added: see note 4 supra). Where the appointment is made by the company, it requires the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, the permission of the court: Sch B1 para 103(4)(b) (as so added). As to the meaning of 'property' see para 489 note 8 post.

18 Ie appointed under ibid Sch B1 para 22(2) (as added) (see para 236 et seq ante).

19 Ibid Sch B1 para 103(5) (as added: see note 4 supra).

20 Ibid Sch B1 para 103(5)(a) (as added: see note 4 supra). Where the appointment is made by the directors of the company, it requires the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, the permission of the court: Sch B1 para 103(5)(b) (as so added).

21 Insolvency Rules 1986, SI 1986/1925, rr 2.127, 2.128 (rr 2.127, 2.128, Sch 4 Form 2.40B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.128, Sch 4 Form 2.40B (as so substituted).

22 Insolvency Act 1986 Sch B1 para 100(2)(a) (as added: see note 4 supra).

23 Ibid Sch B1 para 100(2)(b) (as added: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

259 Joint and concurrent administrators

NOTE 21--SI 1986/1925 Sch 4 Form 2.40B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ii) Appointment of Administrator/E. JOINT AND CONCURRENT ADMINISTRATORS/260. Commission of offences by joint and concurrent administrators.

260. Commission of offences by joint and concurrent administrators.

Where two or more persons are appointed to act jointly as the administrator¹ of a company² and an offence of omission is committed by the administrator, each of the persons appointed to act jointly commits the offence³ and may be proceeded against and punished individually⁴. Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, these provision apply only in relation to those functions⁵.

1 For the meaning of 'administrator' see para 212 note 1 ante. For these purposes, a reference to the administrator of a company is a reference to the two or more persons appointed to act jointly acting jointly (see the Insolvency Act 1986 s 8, Sch B1 para 101(1), (2) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16)). However, in the Insolvency Act 1986 Sch B1 paras 87-99 (as added) (see paras 244-258 ante), a reference to the administrator of a company is a reference to any or all of the persons appointed to act jointly: Sch B1 para 101(3) (as so added). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

2 See para 259 ante. As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 Sch B1 para 101(4)(a) (as added: see note 1 supra).

4 Ibid Sch B1 para 101(4)(b) (as added: see note 1 supra).

5 Ibid Sch B1 para 101(4)(b) (as added: see note 1 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iii) Effect of Administration/261. Dismissal or suspension of winding-up petitions.

(iii) Effect of Administration

261. Dismissal or suspension of winding-up petitions.

A petition for the winding up of a company¹ will be dismissed on the making of an administration order² in respect of the company³, and will be suspended while the company is in administration⁴ following the appointment of an administrator⁵ by the holder of a qualifying floating charge⁶.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'administration order' see para 212 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 40(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 For the meaning of 'in administration' see para 214 note 4 ante.

5 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

6 Insolvency Act 1986 Sch B1 para 40(1)(b) (as added: see note 3 supra). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante. As to the appointment of administrators by charge-holders see Sch B1 para 14 (as added); and para 228 et seq ante.

A petition presented under s 124A (as added and amended) (petition for winding-up in grounds of public interest: see para 444 post) or the Financial Services and Markets Act 2000 s 367 (winding-up by the court: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497) will not be suspended under these provisions: Insolvency Act 1986 Sch B1 para 40(2) (as so added). Where an administrator becomes aware that any such petition was presented before his appointment, he must apply to the court for directions under Sch B1 para 63 (as added) (see para 312 post): Sch B1 para 40(3) (as so added). As to the making of applications see para 1055 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iii) Effect of Administration/262. Dismissal of administrative or other receiver.

262. Dismissal of administrative or other receiver.

When an administration order¹ takes effect in respect of a company², any administrative receiver³ of the company must vacate office⁴. Where a company is in administration⁵, any receiver of part of the company's property⁶ must vacate office if the administrator⁷ requires him to⁸. Where an administrative receiver or receiver vacates office under these provisions, his remuneration⁹ will be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office¹⁰ and he need not take any further steps¹¹ in connection with the payment of the company's preferential debts¹².

1 For the meaning of 'administration order' see para 212 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by the Insolvency Act 1986 s 8, Sch B1 para 111(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

4 Insolvency Act 1986 Sch B1 para 41(1) (as added: see note 3 supra).

5 For the meaning of 'in administration' see para 214 note 4 ante.

6 As to the meaning of 'property' see para 489 note 8 post.

7 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

8 Insolvency Act 1986 Sch B1 para 41(2) (as added: see note 3 supra).

9 'Remuneration' includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company: *ibid* Sch B1 para 41(4)(a) (as added: see note 3 supra).

10 *Ibid* Sch B1 para 41(3)(a) (as added: see note 3 supra). The charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed; and the provision for payment is subject to Sch B1 para 43 (as added) (see para 263 post): Sch B1 para 41(4)(b), (c) (as so added). For the meaning of 'security' see para 109 note 10 ante.

11 *Ie* under *ibid* s 40 (see COMPANIES vol 15 (2009) PARA 1334).

12 *Ibid* Sch B1 para 41(3)(b) (as added: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iii) Effect of Administration/263. Moratorium on legal proceedings.

263. Moratorium on legal proceedings.

When a company¹ is in administration²:

- 521 (1) no resolution may be passed for the winding up of the company³;
 - 522 (2) no order may be made for the winding up of the company⁴;
 - 523 (3) an administrative receiver⁵ of the company may not be appointed⁶; and
 - 524 (4) without the court's permission⁷ or the administrator's⁸ consent:
- 13
- 23. (a) no step may be taken to enforce security⁹ over the company's property¹⁰;
 - 24. (b) no step may be taken to repossess goods in the company's possession under a hire-purchase agreement¹¹;
 - 25. (c) a landlord¹² may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company¹³; and
 - 26. (d) no legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company¹⁴.

14

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'in administration' see para 214 note 4 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 42(1), (2) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 Insolvency Act 1986 Sch B1 para 42(3) (as added: see note 3 supra). This does not apply to an order made on a petition presented under s 124A (as added and amended) (petition for winding-up in grounds of public interest: see para 444 post) or the Financial Services and Markets Act 2000 s 367 (winding-up by the court: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497); Insolvency Act 1986 Sch B1 para 42(4) (as so added). If a petition presented under one of these provisions comes to the attention of the administrator, he must apply to the court for directions under Sch B1 para 63 (as added) (see para 312 post): Sch B1 para 42(5) (as so added). As to the making of applications see para 1055 et seq post.

5 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by ibid Sch B1 para 111(1) (as added: see note 3 supra). As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

6 Ibid Sch B1 paras 43(1), (6A) (Sch B1 as added (see note 3 supra); and Sch B1 para 43(6A) added by Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 2(1), (3)).

7 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. Where the court gives permission for a transaction under heads (a)-(d) in the text it may impose a condition or a requirement in connection with the transaction: Insolvency Act 1986 Sch B1 para 43(7) (as added: see note 3 supra).

8 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

9 For the meaning of 'security' see para 109 note 10 ante.

10 Insolvency Act 1986 Sch B1 para 43(2) (as added: see note 3 supra). As to the meaning of 'property' see para 489 note 8 post.

11 Ibid Sch B1 para 43(3) (as added: see note 3 supra). As to the meaning of 'hire-purchase agreement' see para 224 note 12 ante.

12 For the meaning of 'landlord' see para 224 note 13 ante.

13 Insolvency Act 1986 Sch B1 para 43(4) (as added: see note 3 supra).

14 Ibid Sch B1 para 43(6) (as added: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

263 Moratorium on legal proceedings

NOTE 14--The question for the court in deciding an application for permission is whether the applicant's claims are exceptional in some respect, not whether they have a real prospect of success: *Unite the Union v Nortel Networks UK Ltd (in administration)* [2010] EWHC 826 (Ch), [2010] All ER (D) 164 (Apr).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/A. PUBLICITY/264. Notification and advertisement of administrator's appointment.

(iv) Process of Administration

A. PUBLICITY

264. Notification and advertisement of administrator's appointment.

A person who becomes the administrator¹ of a company² must as soon as is reasonably practicable:

- 525 (1) send a notice of his appointment³ to the company⁴;
- 526 (2) advertise his appointment once in the Gazette⁵ and once in such newspaper as he thinks most appropriate for ensuring that the appointment comes to the notice of the company's creditors⁶; and
- 527 (3) obtain a list of the company's creditors⁷ and send a notice of his appointment to each creditor of whose claim and address he is aware⁸.

Before the end of the period of seven days beginning with the day on which he was notified of his appointment⁹, he must send a notice of his appointment to the registrar of companies¹⁰; and as soon as reasonably practicable after that date, he must give notice of his appointment:

- 528 (a) if a receiver or an administrative receiver¹¹ has been appointed, to him¹²;
- 529 (b) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any)¹³;
- 530 (c) to any enforcement or other officer¹⁴ who, to the administrator's knowledge, is charged with execution or other legal process against the company¹⁵;
- 531 (d) to any person who, to the administrator's knowledge, has distrained against the company or its property¹⁶; and
- 532 (e) any supervisor of a voluntary arrangement¹⁷.

An administrator commits an offence if he fails without reasonable excuse to comply with any of these requirements¹⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Where an administrator is required to send a notice of his appointment, he must do so in the specified form: Insolvency Act 1986 s 8, Sch B1 para 46(8)(b) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)); Insolvency Rules 1986, SI 1986/1925, r 2.27(3) (r 2.27, Sch 4 Forms 2.11B, 2.12B substituted by SI 2003/1730). As to the specified form see the Insolvency Rules 1986, SI 1986/1925, rr 2.27, 12.7, Sch 4 Form 2.12B (as so substituted). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. A notice must also contain the prescribed information: Insolvency Act 1986 Sch B1 para 46(8)(a) (as so added).

4 Ibid Sch B1 para 46(1), (2)(a) (as added: see note 3 supra).

5 As to the Gazette, and the gazetting of notices, see para 1048 post.

6 Insolvency Act 1986 Sch B1 para 46(2)(b) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.27(1) (as substituted: see note 3 supra). As to the form of the advertisement see r 2.27, Sch 4 Form 2.11B (as so substituted).

7 Insolvency Act 1986 Sch B1 para 46(3)(a) (as added: see note 3 supra).

8 Ibid Sch B1 para 46(3)(b) (as added: see note 3 supra). The court may direct that this requirement is not to apply, or that it should apply with the substitution of a different period: Sch B1 para 46(7) (as so added). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

9 le: (1) where the administrator was appointed by administration order, the date of the order; (2) where he was appointed by the holder of a qualifying floating charge under ibid Sch B1 para 14 (as added) (see para 228 et seq ante), the date on which he receives notice under Sch B1 para 20 (as added) (see para 234 ante); and (3) where he was appointed by the company or the directors of the company under Sch B1 para 22 (as added) (see para 236 ante), the date on which he receives notice under Sch B1 para 32 (as added) (see para 242 ante): Sch B1 para 46(6) (as added: see note 3 supra). The court may direct that this requirement is not to apply, or that it should apply with the substitution of a different period: Sch B1 para 46(7) (as so added). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

10 Ibid Sch B1 para 46(4) (as added: see note 3 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

11 As to the meaning of 'administrative receiver' see para 8 note 2 ante; definition applied by ibid Sch B1 para 111(1) (as added: see note 3 supra). As to administrative receivers generally see para 380 et seq post; and COMPANIES vol 15 (2009) PARAS 1337-1338.

12 Ibid Sch B1 para 46(5) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.27(2)(a) (as substituted: see note 3 supra).

13 Ibid r 2.27(2)(b) (as substituted: see note 3 supra).

14 Ibid r 2.27(2)(c) (as substituted) refers to 'a sheriff' for these purposes but, by virtue of amendments made by the Courts Act 2003 (see eg the Insolvency Act 1986 s 184; and para 884 post), this should be read as referring to an enforcement or other officer.

15 Insolvency Rules 1986, SI 1986/1925, r 2.27(2)(c) (as substituted: see note 3 supra).

16 Ibid r 2.27(2)(d) (as substituted: see note 3 supra).

17 Ibid r 2.27(2)(e) (as substituted: see note 3 supra). The reference in the text to a voluntary arrangement is a reference to a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante): Insolvency Rules 1986, SI 1986/1925, r 2.27(2)(e) (as so substituted).

18 Insolvency Act 1986 Sch B1 para 46(9) (as added: see note 3 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

264 Notification and advertisement of administrator's appointment

NOTES 3, 6--SI 1986/1925 Sch 4 Form 2.11B revoked: SI 2010/686.

NOTE 6--SI 1986/1925 r 2.27(1) substituted: SI 2009/642. SI 1986/1925 r 2.27(1A) added: SI 2010/686.

NOTE 14--The reference to a sheriff is now to an enforcement officer: SI 1986/1925 r 2.27(2)(c) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/A. PUBLICITY/265. Publicity in administration.

265. Publicity in administration.

While a company¹ is in administration² every business document³ issued by or on behalf of the company or the administrator⁴ must state the name of the administrator⁵, and that the affairs, business⁶ and property⁷ of the company are being managed by him⁸. If any of the administrator, an officer⁹ of the company, or the company without reasonable excuse authorises or permits a contravention of these provisions, that person commits an offence¹⁰.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'in administration' see para 214 note 4 ante.

3 In every invoice, order for goods or services and business letter: Insolvency Act 1986 s 8, Sch B1 para 45(3) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'document' see COMPANIES vol 14 (2009) PARA 678; definition applied by the Insolvency Act 1986 s 251.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Insolvency Act 1986 Sch B1 para 45(1)(a) (as added: see note 3 supra). Where two or more persons are appointed to act jointly as administrator, the reference in Sch B1 para 45(1)(a) (as added) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly: Sch B1 para 101(1), (5) (as so added).

6 As to the meaning of 'business' see para 156 note 1 ante.

7 As to the meaning of 'property' see para 489 note 8 post.

8 Insolvency Act 1986 Sch B1 para 45(1)(b) (as added: see note 3 supra).

9 For the meaning of 'officer' see para 690 post.

10 Insolvency Act 1986 Sch B1 para 45(2) (as added: see note 3 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106(1) (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

265 Publicity in administration

TEXT AND NOTES--1986 Act Sch B1 para 45 substituted: SI 2008/1897.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/266. Administrator's duty to request statement of affairs.

B. STATEMENT OF AFFAIRS

266. Administrator's duty to request statement of affairs.

As soon as is reasonably practicable after appointment, the administrator¹ of a company² must by notice in the prescribed form³ require any person:

- 533 (1) who is or has been an officer⁴ of the company⁵;
- 534 (2) who took part in the formation of the company during the period of one year ending with the date on which the company enters administration⁶;
- 535 (3) employed⁷ by the company during that period⁸; or
- 536 (4) who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company⁹,

to provide him with a statement of the affairs of the company¹⁰. These persons are known as 'relevant persons'¹¹. The notice must inform each of the relevant persons:

- 537 (a) of the names and addresses of all others (if any) to whom the same notice has been sent¹²;
- 538 (b) of the time within which the statement must be delivered¹³;
- 539 (c) of the penalty for non-compliance¹⁴; and
- 540 (d) of the application to him, and to each other relevant person, of the duty to provide information¹⁵, and to attend on the administrator, if required¹⁶.

The administrator must furnish each relevant person to whom he has sent notice with the forms required for the preparation of the statement of affairs¹⁷.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Where an administrator is required to request a statement of a company's affairs he must do so in the form set out in the specified form: Insolvency Act 1986 s 8, Sch B1 para 47(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16); Insolvency Rules 1986, SI 1986/1925, r 2.28(2) (rr 2.1, 2.28, Sch 4 Form 2.13B substituted by SI 2003/1730). As to the specified form see the Insolvency Rules 1986, SI 1986/1925, rr 2.28, 12.7, Sch 4 Form 2.13B (as so substituted). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 For the meaning of 'officer' see para 690 post.

5 Insolvency Act 1986 Sch B1 para 47(3)(a) (as added: see note 3 supra).

6 Ibid Sch B1 para 47(3)(b) (as added: see note 3 supra). For the meaning of 'in administration' see para 214 note 4 ante.

7 For these purposes, a reference to 'employment' is a reference to employment through a contract of employment or a contract for services: ibid Sch B1 para 47(4) (as added: see note 3 supra).

8 Ibid Sch B1 para 47(3)(c) (as added: see note 3 supra).

9 Ibid Sch B1 para 47(3)(d) (as added: see note 3 supra).

10 Ibid Sch B1 para 47(1) (as added: see note 3 supra). Any request for a statement of affairs may be revoked by the administrator or, where a request for revocation has been refused, by the court: see Sch B1 para 48(2)(a), (3) (as so added). See also para 268 post. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

11 Ibid Sch B1 para 47(1) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.28(1) (as substituted: see note 3 supra).

12 Ibid r 2.28(3)(a) (as substituted: see note 3 supra).

13 Ibid r 2.28(3)(b) (as substituted: see note 3 supra).

14 Ibid r 2.28(3)(c) (as substituted: see note 3 supra). The notice must inform each of the relevant persons of the effect of the Insolvency Act 1986 Sch B1 para 48(4) (as added) (penalty for non-compliance: see para 267 post): see the Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); and the Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.28(3)(c) (as so substituted).

15 Ie under the Insolvency Act 1986 s 235 (as amended) (see para 678 post): see the Insolvency Rules 1986, SI 1986/1925, r 2.28(3)(d) (as substituted: see note 3 supra).

16 Ibid r 2.28(3)(d) (as substituted: see note 3 supra).

17 Ibid r 2.28(4) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

266 Administrator's duty to request statement of affairs

NOTE 3--SI 1986/1925 Sch 4 Form 2.13B substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/267. Duty to provide statement of affairs and content of statement.

267. Duty to provide statement of affairs and content of statement.

A person required to submit a statement of affairs¹ must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement², and he commits an offence if he fails without reasonable excuse to comply with the requirement³.

The statement must:

- 541 (1) be in the prescribed form and contain all the particulars required by that form⁴;
- 542 (2) be verified by a statement of truth in accordance with the Civil Procedure Rules⁵;
- 543 (3) give particulars of the company's⁶ property⁷, debts and liabilities⁸;
- 544 (4) give the names and addresses of the company's creditors⁹;
- 545 (5) specify the security¹⁰ held by each creditor¹¹;
- 546 (6) give the date on which each security was granted¹²; and
- 547 (7) contain such other information as may be prescribed¹³.

1 Ibid under the Insolvency Act 1986 Sch B1 para 47(1) (as added) (see para 266 ante).

2 Ibid s 8, Sch B1 para 48(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. This period may be extended by the administrator or, where a request for extension has been refused, by the court: see the Insolvency Act 1986 Sch B1 para 48(2)(b), (3) (as so added). See also para 268 post. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

3 Ibid Sch B1 para 48(4) (as added: see note 2 supra). The offence is punishable on indictment by a fine or summarily by a fine not exceeding the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-tenth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 2 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

4 Ibid Sch B1 para 47(2)(b) (as added: see note 2 supra); Insolvency Rules 1986, SI 1986/1925, r 2.29(1) (r 2.29, Sch 4 Form 2.14B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the prescribed form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.14B (as so substituted).

5 Insolvency Act 1986 Sch B1 para 47(2)(a) (as added: see note 2 supra); Insolvency Rules 1986, SI 1986/1925, r 2.29(1) (as substituted: see note 4 supra). As to statements of truth see CPR Pt 22; and CIVIL PROCEDURE vol 11 (2009) PARA 613 et seq.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 As to the meaning of 'property' see para 489 note 8 post.

8 Insolvency Act 1986 Sch B1 para 47(2)(c) (as added: see note 2 supra).

9 Ibid Sch B1 para 47(2)(d) (as added: see note 2 supra).

10 For the meaning of 'security' see para 109 note 10 ante.

11 Insolvency Act 1986 Sch B1 para 47(2)(e) (as added: see note 2 supra).

12 Ibid Sch B1 para 47(2)(e) (as added: see note 2 supra).

13 Ibid Sch B1 para 47(2)(f) (as added: see note 2 supra). 'Prescribed' means prescribed by the Insolvency Rules: Insolvency Act 1986 s 251. At the date at which this volume states the law no such additional effect or further information has been prescribed.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

267 Duty to provide statement of affairs and content of statement

NOTE 4--SI 1986/1925 Sch 4 Form 2.14B substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/268. Release from duty to submit statement of affairs and extension of time.

268. Release from duty to submit statement of affairs and extension of time.

The administrator¹ may revoke a requirement that a relevant person² provide him with a statement of affairs³ and may extend the time limit for submission of such statements⁴. This power may be exercised at the administrator's own discretion or at the request of any relevant person⁵. A relevant person may, if he requests a release or extension of time and it is refused by the administrator, apply to the court⁶ for it⁷, and the court may, at its discretion, fix a venue⁸ for the application to be heard¹⁰ and there make an order revoking a requirement or extending a time limit as it sees fit¹¹. Alternatively, if it thinks that no sufficient cause is shown for the application, the court may dismiss it without a hearing¹².

On any application under these provisions the relevant person's costs must be paid in any event by him and, unless the court otherwise orders, no allowance towards them must be made out of the assets¹³.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the relevant persons for these purposes see para 266 ante.

3 le under the Insolvency Act 1986 Sch B1 para 47(1) (as added) (see para 266 ante).

4 Ibid s 8, Sch B1 para 48(2) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. The time limit for submission of statements is 11 days: see the Insolvency Act 1986 Sch B1 para 48(1) (as added); and para 267 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.31(1) (r 2.31 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

7 Insolvency Act 1986 Sch B1 para 48(3)(a) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, r 2.31(2) (as substituted: see note 5 supra).

8 For the meaning of 'venue' see para 91 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 2.31(3) (as substituted: see note 5 supra). Notice must be given to the relevant person: r 2.31(3) (as so substituted). The relevant person must, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it: r 2.31(4) (as so substituted). The administrator may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention: r 2.31(5) (as so substituted). If such a report is filed, a copy of it must be sent by the administrator to the relevant person, not later than five days before the hearing: r 2.31(4) (as so substituted).

11 Insolvency Act 1986 Sch B1 para 48(3)(b) (as added: see note 4 supra). Sealed copies of any order made on the application must be sent by the court to the relevant person and the administrator: Insolvency Rules 1986, SI 1986/1925, r 2.31(6) (as substituted: see note 5 supra).

12 Ibid r 2.31(3) (as substituted: see note 5 supra). The court must not dismiss an application without a hearing without giving the relevant person at least seven days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing: r 2.31(3) (as so substituted).

13 Ibid r 2.31(7) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/269. Delivery of statement of affairs.

269. Delivery of statement of affairs.

The relevant person¹ making the statement of truth in the statement of affairs must deliver the statement, together with a copy, to the administrator².

1 As to the relevant persons for these purposes see para 266 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.29(3) (r 2.29 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante. The relevant person may also be required, where applicable, to deliver a copy of the statement of affairs to all persons whom the administrator has required to make a statement of concurrence: Insolvency Rules 1986, SI 1986/1925, r 2.29(3) (as so substituted). As to the persons who may be required to submit statements of concurrence see para 270 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/270. Statements of concurrence.

270. Statements of concurrence.

Where a statement of affairs has been submitted¹, the administrator² may require any relevant person³ to submit a statement of concurrence stating that he concurs in the statement of affairs⁴. A person required to submit a statement of concurrence must do so before the end of the period of five business days⁵ (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by him⁶.

A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or he considers the statement of affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it⁷. Every statement of concurrence must be verified by a statement of truth⁸ and be delivered to the administrator by the person who makes it, together with a copy of it⁹.

1 In accordance with the Insolvency Act 1986 Sch B1 paras 47, 48 (as added) (see paras 266-267 ante).

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 As to the relevant persons for these purposes see para 266 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.29(2) (r 2.29, Sch 4 Form 2.15B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. The form for the statement of concurrence is set out in the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.15B (as so substituted). Where the administrator requires a statement of concurrence he must inform the person making the statement of affairs of that fact (r 2.29(2) (as so substituted)); and the relevant person making the statement of truth in the statement of affairs must deliver the statement, together with a copy, to the person or persons required to make a statement of concurrence (r 2.29(3) (as so substituted)).

5 For the meaning of 'business day' see para 228 note 4 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.29(4) (as substituted: see note 4 supra). As to the delivery of the statement of affairs see para 269 ante.

7 Ibid r 2.29(5) (as substituted: see note 4 supra).

8 As to statements of truth see CPR Pt 22; and CIVIL PROCEDURE vol 11 (2009) PARA 613 et seq.

9 Insolvency Rules 1986, SI 1986/1925, r 2.29(6) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/271. Filing of statements and restriction on disclosure.

271. Filing of statements and restriction on disclosure.

The administrator¹ must as soon as is reasonably practicable send to the registrar of companies and file with the court² a specified form³ together with a copy of the statement of affairs⁴ and any statement of concurrence⁵. This is, however, subject to the proviso that where the administrator thinks that it would prejudice the conduct of the administration for the whole or part of the statement of the company's⁶ affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement or any specified part of it⁷, and the court may, on such application, order that the statement or, as the case may be, the specified part of it, is not to be filed with the registrar⁸. If a creditor seeks disclosure of a statement of affairs or a specified part of it in relation to which an order has been made under these provisions, he may apply to the court for an order that the administrator disclose it or a specified part of it⁹, and the court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit¹⁰.

If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded¹¹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 The form is set out in the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.16B (rr 2.1, 2.29, 2.30, Sch 4 Form 2.16B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 As to the statement of affairs see para 266 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.29(7) (as substituted: see note 3 supra). As to statements of concurrence see para 270 ante.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.30(1) (as substituted: see note 3 supra). As to the making of applications see para 1055 et seq post. The provisions of CPR Pt 31 (general rules relating to disclosure and inspection of documents: see CIVIL PROCEDURE vol 11 (2009) PARA 538 et seq) do not apply to an application under the Insolvency Rules 1986, SI 1986/1925, r 2.30 (as substituted): r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.30(10) (as so substituted).

8 Ibid r 2.30(2) (as substituted: see note 3 supra). If such an order is made, the administrator must as soon as reasonably practicable send to the registrar of companies Form 2.16B (as substituted) together with a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence: r 2.30(3) (as so substituted).

9 Ibid r 2.30(4) (as substituted: see note 3 supra). The application must be supported by written evidence in the form of an affidavit (r 2.30(4) (as so substituted)), and the applicant must give the administrator notice of his application at least three days before the hearing (r 2.30(5) (as so substituted)).

10 Ibid r 2.30(6) (as substituted: see note 3 supra).

11 Ibid r 2.30(7) (as substituted: see note 3 supra). As soon as reasonably practicable after the making of such an order the administrator must file with the registrar of companies Form 2.16B (as substituted) together with a copy of the statement of affairs to the extent provided by the order: r 2.30(8) (as so substituted). When the statement of affairs is filed in accordance with this provision, the administrator must, where he has sent a statement of proposals under the Insolvency Act 1986 Sch B1 para 49 (as added) (see para 273 post), provide the creditors with a copy of the statement of affairs as filed, or a summary of it: Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.30(9) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

271 Filing of statements and restriction on disclosure

NOTES 3, 8, 11--SI 1986/1925 Sch 4 Form 2.16B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/B. STATEMENT OF AFFAIRS/272. Expenses of statement of affairs.

272. Expenses of statement of affairs.

A relevant person¹ making a statement of the affairs² or statement of concurrence³ is allowed, and is paid by the administrator⁴ out of his receipts, any expenses he incurs in so doing which the administrator considers reasonable⁵. Any decision by the administrator under this provision is subject to appeal to the court⁶. Nothing in this provision relieves a relevant person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the administrator⁷.

1 As to the relevant persons for these purposes see para 266 ante.

2 As to the statement of affairs see para 266 et seq ante.

3 As to statements of concurrence see para 270 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.32(1) (r 2.32 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.32(2) (as substituted: see note 5 supra). As to the procedure for making an appeal see para 1030 et seq post.

7 Ibid r 2.32(3) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/C. ADMINISTRATOR'S PROPOSALS/273. Statement of administrator's proposals.

C. ADMINISTRATOR'S PROPOSALS

273. Statement of administrator's proposals.

The administrator¹ of a company² must make a statement in the prescribed form³ setting out proposals for achieving the purpose of administration⁴. Such proposals may include either a proposal for a voluntary arrangement⁵ or a proposal for a compromise or arrangement⁶, and the statement must include:

- 548 (1) details of the court⁷ where the proceedings are and the relevant court reference number⁸;
- 549 (2) the full name, registered address, registered number and any other trading names of the company⁹;
- 550 (3) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment and, where there are joint administrators, details of matters relevant thereto¹⁰;
- 551 (4) the names of the directors and secretary of the company and details of any shareholdings in the company they may have¹¹;
- 552 (5) an account of the circumstances giving rise to the appointment of the administrator¹²;
- 553 (6) if a statement of the company's affairs has been submitted¹³, a copy or summary of it, with the administrator's comments, if any¹⁴;
- 554 (7) if an order limiting the disclosure of the statement of affairs has been made¹⁵, a statement of that fact¹⁶;
- 555 (8) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held¹⁷;
- 556 (9) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date¹⁸, a list of the company's creditors including their names, addresses and details of their debts¹⁹, including any security held, and an explanation as to why there is no statement of affairs²⁰;
- 557 (10) the basis upon which it is proposed that the administrator's remuneration should be fixed²¹;
- 558 (11) certain information, where applicable, concerning the valuation of the prescribed part²²;
- 559 (12) how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration is to end²³;
- 560 (13) where the administrator has decided not to call a meeting of creditors, his reasons²⁴;
- 561 (14) the manner in which the affairs and business of the company have, since the date of the administrator's appointment, been managed and financed²⁵ and will, if the administrator's proposals are approved, continue to be managed and financed²⁶;
- 562 (15) whether the European Regulation on Insolvency Proceedings²⁷ applies²⁸ and, if so, whether the proceedings are main proceedings²⁹ or territorial proceedings³⁰;
- 563 (16) an explanation, where applicable, of why the administrator thinks the objectives of rescuing the company as a going concern³¹ or achieving a better result

for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration)³² cannot be achieved³³; and
 564 (17) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals³⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the prescribed form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.17B (rr 2.1, 2.33, Sch 4 Form 2.17B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 49(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16); Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.33(1) (as substituted: see note 3 supra). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'the purpose of administration' see para 214 ante.

The administrator's statement may not in general include anything which affects the right of a secured creditor to enforce his security, would result in a preferential debt being paid otherwise than in priority to a non-preferential debt, or would result in one preferential creditor being paid a smaller proportion of his debt than another: see the Insolvency Act 1986 Sch B1 para 73 (as added); and para 360 post.

5 Ibid Sch B1 para 49(3)(a) (as added: see note 4 supra). The reference in the text to a voluntary arrangement is a reference to a voluntary arrangement under Pt I (ss 1-7B) (as amended) (see para 71 et seq ante); Sch B1 para 49(3)(a) (as so added). This provision is without prejudice to s 4(3) (see para 123 ante): Sch B1 para 49(3)(a) (as so added).

6 Ibid Sch B1 para 49(3)(b) (as added: see note 4 supra). The reference in the text to a compromise or arrangement is a reference to a compromise or arrangement to be sanctioned under the Companies Act 1985 s 425 (as amended) (compromise with creditors or members: see COMPANIES vol 15 (2009) PARA 1425 et seq): Insolvency Act 1986 Sch B1 para 49(3)(b) (as so added).

7 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

8 Insolvency Act 1986 Sch B1 para 49(2)(a) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(a) (as substituted: see note 3 supra).

9 Ibid r 2.33(2)(b) (as substituted: see note 3 supra).

10 Ibid r 2.33(2)(c) (as substituted: see note 3 supra). The reference in the text to the matter relevant to joint administrators is a reference to the matters set out in the Insolvency Act 1986 Sch B1 para 100(2) (as added) (see para 259 ante): Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(a) (as so substituted).

11 Ibid r 2.33(2)(d) (as substituted: see note 3 supra).

12 Ibid r 2.33(2)(e) (as substituted: see note 3 supra).

13 See para 266 et seq ante.

14 Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(f) (as substituted: see note 3 supra).

13 le under ibid r 2.30 (as substituted) (see para 271 ante): see r 2.33(2)(g) (as substituted: see note 3 supra).

16 Ibid r 2.33(2)(g) (as substituted: see note 3 supra). This part of the statement, if applicable, must also contain: (1) details of who provided the statement of affairs (r 2.33(2)(g)(i) (as so substituted)); (2) the date of the order of limited disclosure (r 2.33(2)(g)(ii) (as so substituted)); and (3) the details or a summary of the details that are not subject to that order (r 2.33(2)(g)(iii) (as so substituted)).

17 Ibid r 2.33(2)(h) (as substituted: see note 3 supra).

- 18 This must, unless the court otherwise orders, be a date not earlier than that on which the company entered administration: *ibid* r 2.33(2)(j) (as substituted: see note 3 *supra*). For the meaning of 'enters administration' see para 212 note 1 *ante*.
- 19 For the meaning of 'debt' see para 749 *post*.
- 20 Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(j) (as substituted: see note 3 *supra*).
- 21 *Ibid* r 2.33(2)(k) (as substituted: see note 3 *supra*). As to the fixing of the administrator's remuneration for these purposes see r 2.106 (as substituted); and para 375 *post*.
- 22 *Ibid* r 2.33(2)(l) (as substituted: see note 3 *supra*). As to the prescribed part see para 109 note 11 *ante*. The information required to be given is: (1) an estimate, to the best of the administrator's knowledge and belief, of the value of the prescribed part (whether or not he proposes to make an application to the court under the Insolvency Act 1986 s 176A(5) (as added) (see para 322 *post*) or s 176A(3) (as added) applies (see para 322 *post*)), and an estimate of the value of the company's net property; and (2) whether and, if so, why, the administrator proposes to make an application to court under s 176A(5) (as added) (see para 322 *post*): Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(l)(i), (ii) (as so substituted). This information is required only if the administrator does not propose a voluntary arrangement in relation to the company; and nothing is to be taken as requiring any such estimate to include any information the disclosure of which could seriously prejudice the commercial interests of the company, although, if such information is excluded from the calculation, the statement must be accompanied by a statement to that effect: r 2.33(2)(l), (3) (as so substituted).
- 23 *Ibid* r 2.33(2)(m) (as substituted: see note 3 *supra*). If a creditors' voluntary liquidation is proposed, details of the proposed liquidator must be provided, and a statement that (in accordance with the Insolvency Act 1986 Sch B1 para 83(7) (as added) and the Insolvency Rules 1986, SI 1986/1925, r 2.117(3) (as substituted) (see para 370 *post*)) creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of the proposals and before the proposals are approved: r 2.33(2)(m) (as so substituted).
- 24 *Ibid* r 2.33(2)(n) (as substituted: see note 3 *supra*).
- 25 *Ie* including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made: *ibid* r 2.33(2)(o)(i) (as substituted: see note 3 *supra*). Administrators are permitted to sell a company's assets in advance of their proposals being approved by creditors without the direction of the court: see *Re Transbus International Ltd* [2004] EWHC 932 (Ch), [2004] 2 All ER 911; and para 312 notes 7, 35 *post*.
- 26 Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(o)(ii) (as substituted: see note 3 *supra*).
- 27 *Ie* EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings (see para 46 *et seq ante*).
- 28 Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(p)(i) (as substituted: see note 3 *supra*).
- 29 For the meaning of 'main proceedings' see para 460 note 16 *post*.
- 30 Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(p)(ii) (as substituted: see note 3 *supra*). For the meaning of 'territorial proceedings' see para 668 note 17 *post*.
- 31 *Ie* the objective mentioned in the Insolvency Act 1986 Sch B1 para 3(1)(a) (as added) (see para 214 *ante*).
- 32 *Ie* the objective mentioned in *ibid* Sch B1 para 3(1)(b) (as added) (see para 214 *ante*).
- 33 *Ibid* Sch B1 para 49(2)(b) (as added: see note 4 *supra*).
- 34 Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(q) (as substituted: see note 3 *supra*).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

273-274 Administrator's proposals

See SI 1986/1925 r 2.33A (limited disclosure of para 49 statement) (added by SI 2010/686).

273 Statement of administrator's proposals

TEXT AND NOTES--SI 1986/1925 r 2.33 amended, Sch 4 Form 2.17B revoked: SI 2010/686.

NOTE 6--1986 Act Sch B1 para 49(3)(b) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/C. ADMINISTRATOR'S PROPOSALS/274. Persons to whom statement of administrator's proposals must be sent.

274. Persons to whom statement of administrator's proposals must be sent.

The administrator¹ must send a copy of the statement of his proposals²:

- 565 (1) to the registrar of companies³;
- 566 (2) to every creditor of the company⁴ of whose claim and address he is aware⁵;
- 567 (3) to every member⁶ of the company of whose address he is aware⁷; and
- 568 (4) in relation to insurers only, to the Financial Services Authority⁸;

The administrator must comply with this requirement as soon as is reasonably practicable after the company enters administration⁹ and in any event before the end of the period of eight weeks beginning with the day on which the company enters administration¹⁰.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 In the form set out in the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.17B (rr 2.1, 2.33, Sch 4 Forms 2.17B, 2.18B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 49(4)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)); Insolvency Rules 1986, SI 1986/1925, r 2.33(1) (as substituted: see note 2 supra). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 As to the meaning of 'company' see para 212 note 1 ante.

5 Insolvency Act 1986 Sch B1 para 49(4)(b) (as added: see note 3 supra). Each copy of an administrator's statement of proposals sent to a creditor must be accompanied by an invitation to a creditors' meeting: see Sch B1 para 51(1) (as added); and para 286 et seq post.

6 For the meaning of 'member' see para 72 note 9 ante.

7 Insolvency Act 1986 Sch B1 para 49(4)(c) (as added: see note 3 supra). The administrator will be taken to comply with this requirement if he publishes in such newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the company's members a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address: Sch B1 para 49(6) (as so added); Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.33(6) (as substituted: see note 2 supra). The notice must: (1) state the full name of the company; (2) state the full name and address of the administrator; (3) give details of the administrator's appointment; and (4) specify an address to which members can write for a copy of the statement of proposals: r 2.33(7) (as so substituted). The notice must be published as soon as reasonably practicable after the administrator sends his statement of proposals to the company's creditors but no later than eight weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the company entered administration: r 2.33(8) (as so substituted).

8 Insolvency Act 1986 Sch B1 para 49(4)(d) (added by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 1). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

9 Insolvency Act 1986 Sch B1 para 49(5)(a) (as added: see note 3 supra). For the meaning of 'enters administration' see para 212 note 1 ante. Failure without reasonable excuse to comply with Sch B1 para 49(5) (as added) is an offence punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

A period specified under Sch B1 para 49(5) (as added) may be varied in accordance with Sch B1 para 107 (as added) by the court and on the application of the administrator: see Sch B1 paras 49(4), (8), 107(1) (as so added). Where a provision of Sch B1 (as added) provides that a period may be varied, a time period may be extended in respect of a company under Sch B1 para 107 (as added) more than once and after expiry: Sch B1 para 107(1), (2) (as so added). Where the court orders, upon application by the administrator under Sch B1 para 107 (as added), an extension of the period of time in Sch B1 para 49(5) (as added), the administrator must notify in Form 2.18B (as substituted) all the persons set out in the Insolvency Act 1986 Sch B1 para 49(4) (as added) (see the text and notes 1-7 supra) as soon as reasonably practicable after the making of the order: Insolvency Rules 1986, SI 1986/1925, r 2.33(4) (as substituted: see note 2 supra).

A period specified in the Insolvency Act 1986 Sch B1 para 49(5) (as added), Sch B1 para 50(1)(b) (as added) (see para 275 post) or Sch B1 para 51(2) (as added) (see para 286 post) may be varied in respect of a company by the administrator with consent: Sch B1 para 108(1) (as so added). For these purposes, 'consent' means consent of each secured creditor of the company and, if the company has unsecured debts, creditors whose debts amount to more than 50% of the company's unsecured debts (disregarding debts of any creditor who does not respond to an invitation to give or withhold consent) (Sch B1 para 108(2) (as so added)); but, if the administrator has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors (ie under Sch B1 para 52(1)(b) (as added) (see para 288 post)), 'consent' means consent of each secured creditor of the company and (if the administrator thinks that a distribution may be made to preferential creditors) preferential creditors whose debts amount to more than 50% of the preferential debts of the company (disregarding debts of any creditor who does not respond to an invitation to give or withhold consent) (Sch B1 para 108(3) (as so added)). Consent for these purposes may be written, or signified at a creditors' meeting: Sch B1 para 108(4) (as so added). The power to extend under Sch B1 para 108(1) (as added): (1) may be exercised in respect of a period only once; (2) may not be used to extend a period by more than 28 days; (3) may not be used to extend a period which has been extended by the court; and (4) may not be used to extend a period after expiry: Sch B1 para 108(5) (as so added). Where a period is extended under Sch B1 para 107 (as added) or Sch B1 para 108 (as added), a reference to the period is to be taken as a reference to the period as extended: Sch B1 para 109 (as so added). As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

10 Ibid Sch B1 para 49(5)(b) (as added: see note 3 supra). See note 9 supra.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

273-274 Administrator's proposals

See SI 1986/1925 r 2.33A (limited disclosure of para 49 statement) (added by SI 2010/686).

274 Persons to whom statement of administrator's proposals must be sent

TEXT AND NOTES--SI 1986/1925 r 2.33 amended, Sch 4 Form 2.17B revoked: SI 2010/686.

NOTE 7--SI 1986/1925 r 2.33(7), (7A) substituted for r 2.33(7): SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(A) Creditors' Meetings Generally/275. Summoning of meetings.

D. CREDITORS' MEETINGS

(A) CREDITORS' MEETINGS GENERALLY

275. Summoning of meetings.

The administrator¹ of a company² may call and summon a meeting of creditors of the company: such a meeting is known as a 'creditors meeting'³. Notice of a creditors' meeting must be given in the prescribed form⁴ and by giving at least 14 days' notice⁵ of the meeting to all creditors of whose claims and address the administrator is aware and who have claims against the company at the date when the company entered administration⁶ (other than those whose claims have been paid in full)⁷. The notice must:

- 569 (1) specify the purpose of the meeting⁸;
- 570 (2) contain a statement of the effect of the provisions concerning entitlement to vote⁹; and
- 571 (3) contain the forms of proxy¹⁰.

A creditors' meeting must be conducted in accordance with the Insolvency Rules 1986¹¹. However, a requirement to hold a creditors' meeting may be satisfied by conducting correspondence¹².

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 s 8, Sch B1 paras 50(1), 62 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. The initial creditors' meeting (see the Insolvency Act 1986 Sch B1 para 51 (as added); and para 286 post), a creditors' meeting called at the request of the creditors (see Sch B1 para 52(2) (as added); and para 289 post), creditors' meetings called to consider revisions of the administrator's proposals (see Sch B1 para 54(2) (as added); and para 292 post), further creditors' meetings (see Sch B1 para 56(1) (as added); and para 295 post), and creditors' meetings called under the general power to summon such meetings (see the Sch B1 para 62 (as added); and para 310 post), are all governed by these provisions: Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.35(1) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.35, Form 2.20B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Act 1986 Sch B1 para 50(1)(a) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.35(2) (as substituted: see note 3 supra). For the prescribed form see Sch 4 Form 2.20B (as so substituted).

5 This period may be varied: see the Insolvency Act 1986 Sch B1 para 50(2) (as added: see note 3 supra). See also para 274 note 9 ante.

6 For the meaning of 'enters administration' see para 212 note 1 ante.

7 Insolvency Act 1986 Sch B1 para 50(1)(b) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.35(4) (as substituted: see note 3 supra).

8 Ibid r 2.35(4)(a) (as substituted: see note 3 supra).

9 Ibid r 2.35(4)(b) (as substituted: see note 3 supra). As to the provisions concerning entitlement to vote see r 2.38 (as substituted); and para 280 post.

10 Ibid r 2.35(4)(c) (as substituted: see note 3 supra).

11 Insolvency Act 1986 Sch B1 para 50(3) (as added: see note 3 supra).

12 Ibid Sch B1 para 58(3) (as added: see note 3 supra). 'Correspondence' includes correspondence by telephonic or other electronic means: Sch B1 para 111(1) (as so added). The correspondence must be conducted in accordance with Sch B1 para 58 (as added): see Sch B1 para 58(3) (as so added). See also para 297 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

275 Summoning of meetings

TEXT AND NOTES 8-12--SI 1986/1925 r 2.35(4A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(A) Creditors' Meetings Generally/276. Venue, commencement and adjournment.

276. Venue, commencement and adjournment.

In fixing the venue¹ for a creditors' meeting², the administrator³ must have regard to the convenience of creditors; and the meeting must be summoned for commencement between 10.00 and 16.00 hours on a business day⁴, unless the court⁵ otherwise directs⁶.

The meeting may be adjourned once, if the chairman⁷ thinks fit, but not for more than 14 days from the date on which it was fixed to commence, subject to the direction of the court⁸. If a meeting is adjourned, the administrator must as soon as reasonably practicable notify the creditors of the venue of the adjourned meeting⁹.

1 For the meaning of 'venue' see para 91 note 7 ante.

2 For the meaning of 'creditors' meeting' see para 275 ante.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 For the meaning of 'business day' see para 113 note 4 ante.

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 2.35(3) (r 2.35 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

7 As to the chairman of a creditors' meeting see para 277 post.

8 Insolvency Rules 1986, SI 1986/1925, r 2.35(6) (as substituted: see note 6 supra).

9 Ibid r 2.35(7) (as substituted: see note 6 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

276 Venue, commencement and adjournment

TEXT AND NOTES 7-9--SI 1986/1925 r 2.35(6A)-(6F) added, r 2.35(7) amended: SI 2010/686.

NOTE 8--See *Re Checkprice (UK) Ltd* [2009] EWHC 385 (Comm), [2009] All ER (D) 88 (Mar).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(A) Creditors' Meetings Generally/277. The chairman.

277. The chairman.

At any creditors' meeting¹ either the administrator² or a person nominated by him in writing³ to act in his place must be chairman⁴. A person so nominated must be either a person who is qualified to act as an insolvency practitioner⁵ in relation to the company⁶ or an employee of the administrator or his firm who is experienced in insolvency matters⁷.

If within 30 minutes from the time fixed for commencement of the meeting⁸ there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day⁹, to the business day immediately following¹⁰.

1 For the meaning of 'creditors' meeting' see para 275 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 As to the meaning of 'writing' see para 228 note 5 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.36(1) (rr 2.35, 2.36 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 As to qualification to act as an insolvency practitioner see para 8 et seq ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.36(2)(a) (as substituted: see note 4 supra). As to the meaning of 'company' see para 212 note 1 ante.

7 Ibid r 2.36(2)(b) (as substituted: see note 4 supra).

8 See para 276 ante.

9 For the meaning of 'business day' see para 228 note 4 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 2.35(5) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

277 The chairman

TEXT AND NOTES 8-10--SI 1986/1925 r 2.36(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(A) Creditors' Meetings Generally/278. Minutes.

278. Minutes.

The chairman¹ of a creditors' meeting² must cause minutes of its proceedings to be entered in the company's³ minute book⁴. The minutes must include a list of the names and addresses of creditors who attended (personally or by proxy) and, if a creditors' committee has been established⁵, the names and addresses of those elected to be members of the committee⁶.

1 As to the chairman see para 277 ante.

2 For the meaning of 'creditors' meeting' see para 275 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.44(1) (r 2.44 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 As to the establishment of creditors' committees see para 298 post.

6 Insolvency Rules 1986, SI 1986/1925, r 2.44(2) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

278 Minutes

TEXT AND NOTES--SI 1986/1925 r 2.44 substituted by r 2.44A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(A) Creditors' Meetings Generally/279. Establishment of creditors' committees.

279. Establishment of creditors' committees.

A creditors' meeting¹ may establish a creditors' committee to carry out functions conferred on it by the Insolvency Act 1986².

¹ For the meaning of 'creditors' meeting' see para 275 ante.

² Insolvency Act 1986 s 8, Sch B1 para 57(1), (2) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to creditors' committees see further para 298 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(B) Voting and Resolutions/280. Entitlement to vote.

(B) VOTING AND RESOLUTIONS

280. Entitlement to vote.

A person is entitled to vote at a creditors' meeting¹ only if:

- 572 (1) he has given to the administrator², not later than 12.00 hours on the business day³ before the day fixed for the meeting, details in writing of the debt⁴ which he claims⁵;
- 573 (2) the claim has been duly admitted⁶; and
- 574 (3) there has been lodged with the administrator any proxy which he intends to be used on his behalf⁷.

Votes are calculated according to the amount of a creditor's claim as at the date on which the company⁸ entered administration⁹, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off¹⁰. A creditor may not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose¹¹. No vote may be cast by virtue of a claim more than once on any resolution put to the meeting¹².

Where a creditor is entitled to vote under these provisions, has lodged his claim in one or more sets of other proceedings¹³ in another member state, and votes (either in person or by proxy) on a resolution put to the meeting, and the member state liquidator casts a vote in respect of the same claim, only the creditor's vote can be counted¹⁴. Where a creditor has lodged his claim in more than one set of other proceedings and more than one member state liquidator seeks to vote by virtue of that claim, the entitlement to vote by virtue of that claim is exercisable by the member state liquidator in the main proceedings, whether or not the creditor has lodged his claim in the main proceedings¹⁶.

1 For the meaning of 'creditors' meeting' see para 275 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 For the meaning of 'business day' see para 228 note 4 ante.

4 For the meaning of 'debt' see para 749 post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.38(1)(a) (r 2.38 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For this purpose, the debt which a person claims is either the debt which he claims to be due to him from the company or, in relation to a member state liquidator, the debt claimed to be due to creditors in proceedings in relation to which he holds office: Insolvency Rules 1986, SI 1986/1925, r 2.38(1)(a) (as so substituted). Details of the debt must include any calculation for the purposes of rr 2.40-2.42 (see paras 282-284 post): r 2.38(1) (as so substituted). The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with these requirements, if satisfied that the failure was due to circumstances beyond the creditor's control (r 2.38(2) (as so substituted)), and may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole

or any part of the claim (r 2.38(3) (as so substituted)). For the meaning of 'member state liquidator' see para 460 note 15 post.

6 Ibid r 2.38(1)(b) (as substituted: see note 5 supra). The reference in the text to the claim being duly admitted is a reference to its being duly admitted under r 2.38 (as substituted) (see the text and notes 7-15 infra): r 2.38(1)(b) (as so substituted).

7 Ibid r 2.38(1)(c) (as substituted: see note 5 supra).

8 As to the meaning of 'company' see para 212 note 1 ante.

9 For the meaning of 'enters administration' see para 212 note 1 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 2.38(4) (as substituted: see note 5 supra). For these purposes, adjustments by way of set-off are made in accordance with r 2.85 (as substituted) (see para 336 post) as if that rule were applied on the date that the votes are counted: r 2.38(4) (as so substituted).

11 Ibid r 2.38(5) (as substituted: see note 5 supra).

12 Ibid r 2.38(6) (as substituted: see note 5 supra). For these purposes, the claim of a creditor and of any member state liquidator in relation to the same debt are a single claim: r 2.38(9) (as so substituted).

13 For the purposes of r 2.38(7), (8) (as substituted), 'other proceedings' means main proceedings, secondary proceedings or territorial proceedings in another member state: r 2.38(10) (as so substituted). For the meaning of 'main proceedings' see para 460 note 16 post. For the meanings of 'secondary proceedings' and 'territorial proceedings' see para 668 note 17 post.

14 Ibid r 2.38(7) (as substituted: see note 5 supra).

15 Ibid r 2.38(8) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(B) Voting and Resolutions/281. Admission and rejection of claims of entitlement to vote.

281. Admission and rejection of claims of entitlement to vote.

At any creditors' meeting¹ the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote². The chairman's decision³ is subject to appeal to the court⁴ by any creditor⁵. If the chairman is in doubt whether a claim should be admitted or rejected, he must mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained⁶. If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks fit⁷. In the case of the meeting summoned to consider the administrator's⁸ proposals⁹, an application to the court by way of appeal under this provision against a decision of the chairman must not be made later than 14 days after the delivery¹⁰ of the administrator's report¹¹.

Neither the administrator nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under these provisions, unless the court makes an order to that effect¹².

1 For the meaning of 'creditors' meeting' see para 275 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.39(1) (rr 2.1, 2.39 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. This power is exercisable with respect to the whole or any part of the claim: Insolvency Rules 1986, SI 1986/1925, r 2.39(1) (as so substituted). As to a creditor's entitlement to vote see para 280 ante.

3 *Ie* under *ibid* r 2.39 (as substituted), or in respect of any matter arising under r 2.38 (as substituted) (see para 280 ante); r 2.39(2) (as substituted: see note 2 *supra*).

4 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 *et seq post*. As to the procedure for making an appeal see para 1030 *et seq post*.

5 Insolvency Rules 1986, SI 1986/1925, r 2.39(2) (as substituted: see note 2 *supra*).

6 *Ibid* r 2.39(3) (as substituted: see note 2 *supra*).

7 *Ibid* r 2.39(4) (as substituted: see note 2 *supra*).

8 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

9 *Ie* under the Insolvency Act 1986 Sch B1 para 51 (as added) (see para 286 post): see the Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); and the Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.39(5) (as substituted: see note 2 *supra*).

10 *Ie* in accordance with the Insolvency Act 1986 Sch B1 para 53(2) (as added) (see para 290 post): see the Insolvency Rules 1986, SI 1986/1925, r 2.39(5) (as substituted: see note 2 *supra*).

11 *Ibid* r 2.39(5) (as substituted: see note 2 *supra*).

12 *Ibid* r 2.39(6) (as substituted: see note 2 *supra*).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

281 Admission and rejection of claims of entitlement to vote

TEXT AND NOTES 9-11--SI 1986/1925 r 2.39(5) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(B) Voting and Resolutions/282. Secured creditors.

282. Secured creditors.

A secured creditor is entitled to vote at a creditors' meeting¹ only in respect of the balance (if any) of his debt² after deducting the value of his security as estimated by him³. However, in a case where the administrator⁴ has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors⁵ and an initial creditors' meeting⁶ has been requisitioned⁷, then a secured creditor is entitled to vote in respect of the full value of his debt without any deduction of the value of his security⁸.

1 For the meaning of 'creditors' meeting' see para 275 ante.

2 For the meaning of 'debt' see para 749 post.

3 Insolvency Rules 1986, SI 1986/1925, r 2.40(1) (rr 2.1, 2.40 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Ie under the Insolvency Act 1986 Sch B1 para 52(1)(b) (as added) (see para 288 post): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.40(2) (as substituted: see note 3 supra).

6 As to the initial creditors' meeting see para 286 et seq post.

7 Ie under the Insolvency Act 1986 Sch B1 para 52(2) (as added) (see para 289 post): Insolvency Rules 1986, SI 1986/1925, r 2.40(2) (as substituted: see note 3 supra).

8 Ibid r 2.40(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(B) Voting and Resolutions/283. Holders of negotiable instruments.

283. Holders of negotiable instruments.

A creditor must not vote in respect of a debt¹ on, or secured by, a current bill of exchange or promissory note, unless he is willing:

- 575 (1) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company², and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands³; and
- 576 (2) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim⁴.

1 For the meaning of 'debt' see para 749 post.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Rules 1986, SI 1986/1925 r 2.41(a) (r 2.41 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925 r 2.41(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(B) Voting and Resolutions/284. Owners of goods under hire-purchase, conditional sale and chattel leasing agreements.

284. Owners of goods under hire-purchase, conditional sale and chattel leasing agreements.

Subject as follows, an owner of goods under a hire-purchase¹ or chattel leasing agreement², or a seller of goods under a conditional sale agreement³, is entitled to vote in respect of the amount of the debt⁴ due and payable to him by the company⁵ on the date that the company entered administration⁶. In calculating the amount of any debt for this purpose, no account may be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an administration application⁷, a notice of intention to appoint an administrator⁸ or any matter arising as a consequence, or by virtue of the company entering administration⁹.

1 As to hire-purchase agreements see CONSUMER CREDIT vol 9(1) (Reissue) para 95.

2 As to chattel leasing agreements see PERSONAL PROPERTY vol 35 (Reissue) para 1228.

3 As to conditional sale agreements see CONSUMER CREDIT vol 9(1) (Reissue) para 93.

4 For the meaning of 'debt' see para 749 post.

5 As to the meaning of 'company' see para 212 note 1 ante.

6 Insolvency Rules 1986, SI 1986/1925 r 2.42(1) (r 2.42 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'enters administration' see para 212 note 1 ante.

7 For the meaning of 'administration application' see para 216 ante.

8 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

9 Insolvency Rules 1986, SI 1986/1925 r 2.42(2) (as substituted: see note 6 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(B) Voting and Resolutions/285. Resolutions.

285. Resolutions.

A resolution is passed at a creditors' meeting¹ in administration proceedings when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it², although any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the company³.

¹ For the meaning of 'creditors' meeting' see para 275 ante.

² Insolvency Rules 1986, SI 1986/1925 r 2.43(1) (r 2.43 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

³ Insolvency Rules 1986, SI 1986/1925 r 2.43(2) (as substituted: see note 2 supra). As to the chairman see para 277 ante. As to the meaning of 'company' see para 212 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(C) The Initial Creditors' Meeting/286. Initial creditors' meeting.

(C) THE INITIAL CREDITORS' MEETING

286. Initial creditors' meeting.

Each copy of an administrator's¹ statement of proposals² sent to a creditor³ must be accompanied by an invitation to the initial creditors' meeting⁴. The date set for this meeting must be as soon as is reasonably practicable after the company⁵ enters administration⁶, and in any event, within the period of ten weeks beginning with the date on which the company enters administration⁷.

An administrator must present a copy of his statement of proposals to this meeting⁸.

An administrator commits an offence if he fails without reasonable excuse to comply with any of these requirements⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to an administrator's statements of proposals see paras 273-274 ante.

3 Ie under the Insolvency Act 1986 Sch B1 para 49(4)(b) (as added) (see para 273 ante).

4 Ibid s 8, Sch B1 para 51(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'creditors' meeting' see para 275 ante. The requirement for an initial creditors' meeting does not apply if certain conditions are satisfied: see the Insolvency Act 1986 Sch B1 para 52 (as added); and para 288 post.

5 As to the meaning of 'company' see para 212 note 1 ante.

6 Insolvency Act 1986 Sch B1 para 51(2)(a) (as added: see note 4 supra). For the meaning of 'enters administration' see para 212 note 1 ante.

7 Ibid Sch B1 para 51(2)(b) (as added: see note 4 supra). This period may be varied: see Sch B1 para 51(4) (as added); and para 274 note 9 ante. Where the court orders an extension to this period, the administrator must send a notice in the specified form to each person to whom he is required to send notice: Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.34(3) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.34, Form 2.18B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.18B (as so substituted). As to the persons to whom the administrator is required to send notice see the Insolvency Act 1986 Sch B1 para 49(4) (as added); and para 274 ante.

8 Ibid Sch B1 para 51(3) (as added: see note 4 supra).

9 Ibid Sch B1 para 51(5) (as added: see note 4 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 4 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(C) The Initial Creditors' Meeting/287. Notice of an initial creditors' meeting.

287. Notice of an initial creditors' meeting.

Unless the court¹ otherwise directs, notice of an initial creditors' meeting² must be given by notice in the newspaper in which the administrator's³ appointment was advertised and, if he considers it appropriate to do so, in such other newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the company's⁴ creditors⁵. At the same time, notice⁶ to attend the meeting must be sent out to any directors or officers⁷ of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, required⁸.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 As to the initial creditors' meeting see para 286 et seq ante.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 As to the meaning of 'company' see para 212 note 1 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.34(1) (r 2.34, Sch 4 Form 2.19B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 As to the form of the notice see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.19B (as substituted: see note 5 supra).

7 For the meaning of 'officer' see para 690 post.

8 Insolvency Rules 1986, SI 1986/1925, r 2.34(2) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

287 Notice of an initial creditors' meeting

TEXT AND NOTES 1-5--SI 1986/1925 r 2.34(1), (1A) substituted for r 2.34(1): SI 2009/642. SI 1986/1925 r 2.34(1) amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(C) The Initial Creditors' Meeting/288. Circumstances where initial creditors' meeting need not be summoned.

288. Circumstances where initial creditors' meeting need not be summoned.

Unless an initial creditors' meeting¹ is requested by creditors of the company² whose debts amount to at least ten per cent of the total debts of the company³, an administrator⁴ is not required to summon such an initial meeting⁵ if his statement of proposals⁶ states that he thinks:

- 577 (1) that the company has sufficient property⁷ to enable each creditor of the company to be paid in full⁸;
- 578 (2) that the company has insufficient property to enable a distribution to be made to unsecured creditors⁹; or
- 579 (3) that neither the objective of rescuing the company as a going concern¹⁰ nor that of achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration)¹¹ can be achieved¹².

Where the administrator has made such a statement and has not called an initial meeting of creditors, the statement of proposals¹³ will (provided no initial meeting is requisitioned by creditors¹⁴) be deemed to have been approved by the creditors¹⁵.

1 As to the initial creditors' meeting see para 286 et seq ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 As to such meetings see para 289 et seq post.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Ie the Insolvency Act 1986 Sch B1 para 51 (as added) (see para 286 ante) does not apply.

6 As to an administrator's statements of proposals see paras 273-274 ante.

7 As to the meaning of 'property' see para 489 note 8 post.

8 Insolvency Act 1986 s 8, Sch B1 para 52(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

9 Insolvency Act 1986 Sch B1 para 52(1)(b) (as added: see note 8 supra). The reference in the text to the company having insufficient property to enable a distribution to be made to unsecured creditors is a reference to the company having insufficient property to enable such a distribution to be made other than by virtue of s 176A(2)(a) (as added) (see para 322 post): Sch B1 para 52(1)(b) (as so added).

10 Ie the objective mentioned in ibid Sch B1 para 3(1)(a) (as added) (see para 214 ante).

11 Ie the objective mentioned in ibid Sch B1 para 3(1)(b) (as added) (see para 214 ante).

12 Ibid Sch B1 para 52(1)(c) (as added: see note 8 supra).

13 Ie the proposals sent out under ibid Sch B1 para 49 (as added) and the Insolvency Rules 1986, SI 1986/1925, r 2.33 (as substituted) (see paras 273-274 ante).

14 le in accordance with the Insolvency Act 1986 Sch B1 para 49 (as added) and the Insolvency Rules 1986, SI 1986/1925, r 2.37 (as substituted) (see para 289 post).

15 Ibid rr 0.2(1), 2.1(2), 2.33(5) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.33 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(C) The Initial Creditors' Meeting/289. Initial creditors' meeting requisitioned by creditors.

289. Initial creditors' meeting requisitioned by creditors.

The administrator¹ must summon an initial creditors' meeting² if it is requested by creditors of the company³ whose debts amount to at least ten per cent of the total debts of the company⁴. The request must be in the specified form⁵, must be made within 12 days of the date on which the administrator's statement of proposals⁶ is sent out⁷, and must include:

- 580 (1) a list of the creditors concurring with the request, showing the amounts of their respective debts⁸ in the administration⁹;
- 581 (2) written confirmation of his concurrence from each creditor concurring¹⁰; and
- 582 (3) a statement of the purpose of the proposed meeting¹¹.

A meeting so requested must be summoned and held within 28 days of the administrator's receipt of the notice requesting it¹².

The expenses of summoning and holding the meeting must be paid by the creditor who requested it, who must deposit with the administrator security for their payment¹³.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the initial creditors' meeting see para 286 et seq ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 52(2)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 52(2)(b) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.37(1) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.37, Sch 4 Form 2.21B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the prescribed form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.21B (as so substituted).

6 As to an administrator's statements of proposals see paras 273-274 ante.

7 Insolvency Act 1986 Sch B1 para 52(2)(c) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, r 2.37(1) (as substituted: see note 5 supra). This period may be varied: see the Insolvency Act 1986 Sch B1 para 52(4) (as added); and para 274 note 9 ante.

8 For the meaning of 'debt' see para 749 post.

9 Insolvency Rules 1986, SI 1986/1925, r 2.37(1)(a) (as substituted: see note 5 supra). This requirement does not apply if the requisitioning creditor's debt is alone sufficient without the concurrence of other creditors: r 2.37(1) (as so substituted).

10 Ibid r 2.37(1)(b) (as substituted: see note 5 supra).

11 Ibid r 2.37(1)(c) (as substituted: see note 5 supra).

12 Insolvency Act 1986 Sch B1 para 52(3) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, r 2.37(2) (as substituted: see note 5 supra). This period may be varied: see the Insolvency Act 1986 Sch B1 paras 52(4), 107, 108 (as added); and para 274 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 2.37(3) (as substituted: see note 5 supra). The sum to be deposited must be such as the administrator may determine, and he must not act without the deposit having been made: r 2.37(4) (as so substituted). The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration: r 2.37(5) (as so substituted). To the extent that any deposit made under this provision is not required for the payment of expenses of summoning and holding the meeting, it must be repaid to the person who made it: r 2.37(6) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

289 Initial creditors' meeting requisitioned by creditors

TEXT AND NOTES--See SI 1986/1925 r 2.37A (notice of meetings by advertisement only) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(C) The Initial Creditors' Meeting/290. Consideration of administrator's proposals.

290. Consideration of administrator's proposals.

An initial creditors' meeting¹ to which an administrator's² proposals are presented³ must consider them and may either approve them without modification⁴ or approve them with modification to which the administrator consents⁵. After the conclusion of the meeting, the administrator must as soon as is reasonably practicable report any decision taken to the court⁶, the registrar of companies⁷, such other persons as may be prescribed⁸ and, in relation to insurers only, the Financial Services Authority⁹.

If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and must if a resolution is passed to that effect, adjourn the meeting¹⁰.

1 As to the initial creditors' meeting see para 286 et seq ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 See para 286 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 53(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 53(1)(b) (as added: see note 4 supra). Administrators are permitted to sell a company's assets in advance of their proposals being approved by creditors without the direction of the court: see *Re Transbus International Ltd* [2004] EWHC 932 (Ch), [2004] 2 All ER 911; and para 312 notes 7, 35 post.

6 Insolvency Act 1986 Sch B1 para 53(2)(a) (as added: see note 4 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. An administrator commits an offence if he fails without reasonable excuse to comply with Sch B1 para 53(2) (as added): Sch B1 para 53(3) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106(1) (as so added), Sch 10 (as amended: see note 4 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

7 Ibid Sch B1 para 53(2)(b) (as added: see note 4 supra). See also note 6 supra. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

8 Ibid Sch B1 para 53(2)(c) (as added: see note 4 supra). 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251. At the date at which this volume states the law no persons had been prescribed for these purposes. See also note 6 supra.

9 Ibid Sch B1 para 53(2)(d) (added by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 2). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

10 Insolvency Rules 1986, SI 1986/1925, r 2.34(4) (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. The meeting may not be adjourned for more than 14 days, and (subject to any direction by the court) may be adjourned only once: Insolvency Rules 1986, SI 1986/1925, r 2.34(4) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

290 Consideration of administrator's proposals

TEXT AND NOTE 10--SI 1986/1925 r 2.34(4) amended, r 2.34(5), (6) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(C) The Initial Creditors' Meeting/291. Failure to obtain approval of administrator's proposals.

291. Failure to obtain approval of administrator's proposals.

Where an administrator¹ reports to the court² that an initial creditors' meeting³ has failed to approve the administrator's proposals presented to it⁴, the court may:

- 583 (1) provide that the appointment of an administrator will cease to have effect from a specified time⁵;
- 584 (2) adjourn the hearing conditionally or unconditionally⁶;
- 585 (3) make an interim order⁷;
- 586 (4) make an order on a petition for winding up which has been suspended⁸;
- 587 (5) make any other order (including an order making consequential provision) that the court thinks appropriate⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 As to the initial creditors' meeting see para 286 et seq ante.

4 Insolvency Act 1986 s 8, Sch B1 para 55(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 55(2)(a) (as added: see note 4 supra).

6 Ibid Sch B1 para 55(2)(b) (as added: see note 4 supra).

7 Ibid Sch B1 para 55(2)(c) (as added: see note 4 supra).

8 Ibid Sch B1 para 55(2)(d) (as added: see note 4 supra). The reference in the text to a petition for winding up which has been suspended is a reference to a petition which has been suspended under Sch B1 para 40(1) (b) (as added) (see para 261 ante): Sch B1 para 55(2)(d) (as so added).

9 Ibid Sch B1 para 55(2)(e) (as added: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

291 Failure to obtain approval of administrator's proposals

NOTE 5--See *Re ML Design Group* [2006] All ER (D) 75 (Jan).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/ (D) Meeting to Consider Revisions of Administrator's Proposals/292. Statement of revision of administrator's proposals.

(D) MEETING TO CONSIDER REVISIONS OF ADMINISTRATOR'S PROPOSALS

292. Statement of revision of administrator's proposals.

Where an administrator's¹ proposals² have been approved (with or without modification) at an initial creditors' meeting³, the administrator proposes a revision to the proposals⁴, and the administrator thinks that the proposed revision is substantial⁵, then the administrator must:

- 588 (1) summon a creditors' meeting⁶;
- 589 (2) send a statement in the prescribed form⁷ of the proposed revision with the notice of the meeting sent to each creditor⁸;
- 590 (3) send a copy of the statement, within the period of five days of sending out the statement of proposed revisions, to each member of the company⁹ of whose address he is aware¹⁰; and
- 591 (4) present a copy of the statement to the meeting¹¹.

The statement of revised proposals must include:

- 592 (a) details of the court¹² where the proceedings are and the relevant court reference number¹³;
- 593 (b) the full name, registered address, registered number and any other trading names of the company¹⁴;
- 594 (c) details relating to the administrator's appointment as administrator, including the date of appointment and the person making the administration application¹⁵ or appointment¹⁶;
- 595 (d) the names of the directors and secretary of the company and details of any shareholdings in the company they may have¹⁷;
- 596 (e) a summary of the initial proposals and the reason or reasons for proposing a revision¹⁸;
- 597 (f) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be)¹⁹;
- 598 (g) where a proposed revision relates to the ending of the administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the company, a statement that²⁰ creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of the revised proposals and before those revised proposals are approved²¹; and
- 599 (h) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions²².

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to an administrator's statements of proposals see paras 273-274 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 54(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the approval of the administrator's proposals see the Insolvency Act 1986 Sch B1 para 53 (as added); and para 290 ante. As to the initial creditors' meeting see para 286 et seq ante.

4 Ibid Sch B1 para 54(1)(b) (as added: see note 3 supra).

5 Ibid Sch B1 para 54(1)(c) (as added: see note 3 supra).

6 Ibid Sch B1 para 54(2)(a) (as added: see note 3 supra). For the meaning of 'creditors' meeting' see para 275 ante.

7 As to the prescribed form see the Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.45(1), Sch 4 Form 2.22B (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.45, Sch 4 Form 2.22B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

8 Insolvency Act 1986 Sch B1 para 54(2)(b) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.45(1) (as substituted: see note 7 supra). In relation to insurers only, the statement must additionally be sent to the Financial Services Authority: Insolvency Act 1986 Sch B1 para 54(2)(b) (as so added; and amended by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 3). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

9 As to the meaning of 'company' see para 212 note 1 ante.

10 Insolvency Act 1986 Sch B1 para 54(2)(c) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.45(3) (as substituted: see note 7 supra). This is subject to the proviso that the administrator is taken to have complied with this requirement if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address (Insolvency Act 1986 Sch B1 para 54(3) (as so added)), provided that the notice: (1) is published once in such newspaper as the administrator thinks most appropriate for ensuring that the notice comes to the attention of the company's members; and (2) states the full name of the company and the name and address of the administrator, specifies an address to which members can write for a copy of the statement, and is published as soon as reasonably practicable after the administrator sends the statement to creditors (Insolvency Act 1986 Sch B1 para 54(4) (as so added); Insolvency Rules 1986, SI 1986/1925, r 2.45(4) (as so substituted)).

11 Insolvency Act 1986 Sch B1 para 54(2)(d) (as added: see note 3 supra).

12 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

13 Insolvency Rules 1986, SI 1986/1925, r 2.45(2)(a) (as substituted: see note 7 supra).

14 Ibid r 2.45(2)(b) (as substituted: see note 7 supra).

15 For the meaning of 'administration application' see para 216 ante.

16 Insolvency Rules 1986, SI 1986/1925, r 2.45(2)(c) (as substituted: see note 7 supra).

17 Ibid r 2.45(2)(d) (as substituted: see note 7 supra).

18 Ibid r 2.45(2)(e) (as substituted: see note 7 supra).

19 Ibid r 2.45(2)(f) (as substituted: see note 7 supra).

20 In accordance with the Insolvency Act 1986 Sch B1 para 83(7) (as added) and the Insolvency Rules 1986, SI 1986/1925, r 2.117(3) (as substituted) (see para 370 post): r 2.45(2)(g) (as substituted: see note 7 supra).

21 Ibid r 2.45(2)(g) (as substituted: see note 7 supra).

22 Ibid r 2.45(2)(h) (as substituted: see note 7 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

292 Statement of revision of administrator's proposals

NOTE 10--SI 1986/1925 r 2.45(4) amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/ (D) Meeting to Consider Revisions of Administrator's Proposals/293. Consideration of revisions and notification of creditors.

293. Consideration of revisions and notification of creditors.

A creditors' meeting¹ to which a proposed revision is presented² must consider it and may either approve it without modification³ or approve it with modification to which the administrator⁴ consents⁵; and as soon as reasonably practicable after the conclusion of the meeting the administrator must:

- 600 (1) send notice in the specified form⁶ of the result of the meeting (including details of any modifications to the proposals that were approved) to every creditor who received notice of the meeting and any other person who received a copy of the original proposals⁷; and
- 601 (2) file with the court⁸, and send to the registrar of companies, and any creditors who did not receive notice of the meeting (of whose claim he has become subsequently aware), a copy of the specified form, attaching a copy of the proposals considered at the meeting⁹.

An administrator commits an offence if he fails without reasonable excuse to comply with these requirements¹⁰.

1 For the meaning of 'creditors' meeting' see para 275 ante.

2 See para 292 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 54(5)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Insolvency Act 1986 Sch B1 para 54(5)(b) (as added: see note 3 supra). Administrators are permitted to sell a company's assets in advance of their proposals being approved by creditors without the direction of the court: see *Re Transbus International Ltd* [2004] EWHC 932 (Ch), [2004] 2 All ER 911; and para 312 notes 7, 35 post.

6 As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.46(b), Sch 4 Form 2.23B (r 2.46, Sch 4 Form 2.23B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

7 Insolvency Act 1986 Sch B1 para 54(6)(c) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.46(a) (as substituted: see note 6 supra).

8 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

9 Insolvency Act 1986 Sch B1 para 54(6)(a)-(c) (as added: see note 3 supra); Insolvency Rules 1986, SI 1986/1925, r 2.46(b) (as substituted: see note 6 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

10 Insolvency Act 1986 Sch B1 para 54(7) (as added: see note 3 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by

a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

293 Consideration of revisions and notification of creditors

TEXT AND NOTES 6-9--SI 1986/1925 r 2.46(a), (b) substituted by r 2.46(a)-(c): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/ (D) Meeting to Consider Revisions of Administrator's Proposals/294. Failure to obtain approval of revised proposals.

294. Failure to obtain approval of revised proposals.

Where an administrator¹ reports to the court² that a creditors' meeting³ has failed to approve a revision of the administrator's proposals presented to it⁴, the court may:

- 602 (1) provide that the appointment of an administrator will cease to have effect from a specified time⁵;
- 603 (2) adjourn the hearing conditionally or unconditionally⁶;
- 604 (3) make an interim order⁷;
- 605 (4) make an order on a petition for winding up which has been suspended⁸;
- 606 (5) make any other order (including an order making consequential provision) that the court thinks appropriate⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 For the meaning of 'creditors' meeting' see para 275 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 55(1)(b) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 55(2)(a) (as added: see note 4 supra).

6 Ibid Sch B1 para 55(2)(b) (as added: see note 4 supra).

7 Ibid Sch B1 para 55(2)(c) (as added: see note 4 supra).

8 Ibid Sch B1 para 55(2)(d) (as added: see note 4 supra). The reference in the text to a petition for winding up which has been suspended is a reference to a petition which has been suspended under Sch B1 para 40(1) (b) (as added) (see para 261 ante): Sch B1 para 55(2)(d) (as so added).

9 Ibid Sch B1 para 55(2)(e) (as added: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

294 Failure to obtain approval of revised proposals

NOTE 5--See *Re ML Design Group* [2006] All ER (D) 75 (Jan).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/ (E) Meeting Requested by Creditors or the Court/295. Creditors' meeting requisitioned by creditors.

(E) MEETING REQUESTED BY CREDITORS OR THE COURT

295. Creditors' meeting requisitioned by creditors.

The administrator¹ of a company² must summon a creditors' meeting³ if it is requested by creditors of the company whose debts amount to at least ten per cent of the total debts of the company⁴. The request must be in the specified form⁵ and must include:

- 607 (1) a list of the creditors concurring with the request, showing the amounts of their respective debts⁶ in the administration⁷;
- 608 (2) written confirmation of his concurrence from each creditor concurring⁸; and
- 609 (3) a statement of the purpose of the proposed meeting⁹.

A meeting so requested must be held within 28 days of the administrator's receipt of the notice requesting it¹⁰. The expenses of summoning and holding the meeting must be paid by the creditor who requested it, who must deposit with the administrator security for their payment¹¹.

An administrator commits an offence if he fails to summon a creditors' meeting when so requested¹².

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'creditors' meeting' see para 275 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 56(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 56(1)(a) (as added: see note 4 supra); Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.37(1) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.37, Sch 4 Form 2.21B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the prescribed form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.21B (as so substituted).

6 For the meaning of 'debt' see para 749 post.

7 Insolvency Rules 1986, SI 1986/1925, r 2.37(1)(a) (as substituted: see note 5 supra). This requirement does not apply if the requisitioning creditor's debt is alone sufficient without the concurrence of other creditors: r 2.37(1) (as so substituted).

8 Ibid r 2.37(1)(b) (as substituted: see note 5 supra).

9 Ibid r 2.37(1)(c) (as substituted: see note 5 supra).

10 Ibid r 2.37(2) (as substituted: see note 5 supra).

11 Ibid r 2.37(3) (as substituted: see note 5 supra). The sum to be deposited must be such as the administrator may determine, and he must not act without the deposit having been made: r 2.37(4) (as so substituted). The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration: r 2.37(5) (as so substituted). To the extent that any deposit made under this provision is not required for the payment of expenses of summoning and holding the meeting, it must be repaid to the person who made it: r 2.37(6) (as so substituted).

12 Insolvency Act 1986 Sch B1 para 56(2) (as added: see note 4 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 4 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

295 Creditors' meeting requisitioned by creditors

TEXT AND NOTES--See SI 1986/1925 r 2.37A (notice of meetings by advertisement only) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/ (E) Meeting Requested by Creditors or the Court/296. Creditors' meeting requisitioned by court.

296. Creditors' meeting requisitioned by court.

The administrator¹ of a company² must summon a creditors' meeting³ if requested to do so by the court, and commits an offence if he fails to summon such a meeting when so requested⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'creditors' meeting' see para 275 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 56(1)(b) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

4 Insolvency Act 1986 Sch B1 para 56(2) (as added: see note 4 supra). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 4 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/D. CREDITORS' MEETINGS/(F) Alternative to Creditors' Meetings/297. Correspondence instead of creditors' meetings.

(F) ALTERNATIVE TO CREDITORS' MEETINGS

297. Correspondence instead of creditors' meetings.

Anything which is required or permitted¹ to be done at a creditors' meeting² may be done by correspondence³ between the administrator⁴ and creditors in accordance with, and subject to, the following rules and conditions⁵.

The administrator may seek to obtain the passing of a resolution by the creditors by sending a notice in the specified form⁶ to every creditor who is entitled⁷ to be notified of a creditors' meeting⁸. In order to be counted, votes must be received by the administrator by 12.00 hours on the closing date specified on the form and must be accompanied by the statement in writing on entitlement to vote⁹. The closing date must be set at the discretion of the administrator but must not in any event be set less than 14 days from the date of issue of the form¹⁰. For any business to be transacted, the administrator must receive at least one valid form by the closing date specified by him¹¹; if no valid form is received by the specified closing date, the administrator must call¹² a meeting of the creditors¹³.

Any single creditor, or a group of creditors, of the company¹⁴ whose debt¹⁵ or debts amount to at least ten per cent of the total debts of the company may, within five business days from the date of the administrator sending out a resolution or proposals, require him to summon a meeting of creditors¹⁶ to consider the matters raised therein¹⁷. If the administrator's proposals or revised proposals are rejected by the creditors pursuant to this provision, the administrator may call a meeting of creditors¹⁸.

1 Ie by or under the Insolvency Act 1986 Sch B1 (as added).

2 For the meaning of 'creditors' meeting' see para 275 ante.

3 As to the meaning of 'correspondence' see para 275 note 12 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Insolvency Act 1986 s 8, Sch B1 para 58(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. A reference in the Insolvency Act 1986 Sch B1 (as added) or the Insolvency Rules 1986, SI 1986/1925 (as amended) to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on the Insolvency Act 1986 Sch B1 para 58(1) (as added) and in accordance with the Insolvency Rules 1986, SI 1986/1925, r 2.48 (as substituted): Sch B1 para 58(2) (as so added); Insolvency Rules 1986, SI 1986/1925, r 2.48(9) (r 2.48, Sch 4 Form 2.25B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.48(1), Sch 4 Form 2.25B (as substituted: see note 5 supra).

7 Ie under *ibid* r 2.35(4) (as substituted) (see para 275 ante).

8 *Ibid* r 2.48(1) (as substituted: see note 5 supra).

9 Ibid r 2.48(2) (as substituted: see note 5 supra). The statement in writing on entitlement to vote is the statement required by r 2.38 (as substituted) (see para 280 ante). If any votes are received without the statement as to entitlement, or the administrator decides that the creditor is not entitled to vote according to rr 2.38, 2.39 (as substituted) (see paras 280-281 ante), then that creditor's votes must be disregarded: r 2.48(3) (as so substituted).

10 Ibid r 2.48(4) (as substituted: see note 5 supra).

11 Ibid r 2.48(5) (as substituted: see note 5 supra).

12 Ie in accordance with ibid r 2.35 (see para 275 ante).

13 Ibid r 2.48(6) (as substituted: see note 5 supra).

14 As to the meaning of 'company' see para 212 note 1 ante.

15 For the meaning of 'debt' see para 749 post.

16 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925, r 2.37 (see para 289 ante).

17 Ibid r 2.48(7) (as substituted: see note 5 supra). Any meeting called under this provision must be conducted in accordance with r 2.35 (see para 275 ante): r 2.48(7) (as so substituted).

15 Ibid r 2.48(8) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

297 Correspondence instead of creditors' meetings

TEXT AND NOTES--See SI 1986/1925 r 2.48A (creditors' request for further information) (added by SI 2010/686).

NOTE 15--SI 1986/1925 r 2.48(8) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/298. Establishment and constitution of creditors' committee.

E. CREDITORS' COMMITTEES

(A) ESTABLISHMENT, CONSTITUTION AND MEMBERSHIP

298. Establishment and constitution of creditors' committee.

A creditors' meeting¹ may establish a creditors' committee² to carry out functions conferred on it by or under the Insolvency Act 1986³. Where it is resolved by a creditors' meeting to establish a creditors' committee for the purposes of the administration⁴, the committee must consist of at least three and not more than five creditors of the company⁵ elected at the meeting⁶. Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote⁷. A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative⁸.

The acts of the creditors' committee established for any administration are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment⁹.

1 For the meaning of 'creditors' meeting' see para 275 ante.

2 Insolvency Act 1986 s 8, Sch B1 para 58(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

3 Insolvency Act 1986 Sch B1 para 57(2) (as added: see note 2 supra).

4 For the meaning of 'the purpose of administration' see para 214 ante.

5 As to the meaning of 'company' see para 212 note 1 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.50(1) (rr 2.50, 2.65 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.50(2) (as substituted: see note 6 supra). As to the rejection of claims of entitlement to vote see para 281 ante.

8 Ibid r 2.50(3) (as substituted: see note 6 supra). As to the representation of bodies corporate for these purposes see r 2.55 (as substituted); and para 300 post.

9 Ibid r 2.65 (as substituted: see note 6 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

298 Establishment and constitution of creditors' committee

TEXT AND NOTE 7--SI 1986/1925 r 2.50(2) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/299. Formalities of establishment.

299. Formalities of establishment.

The creditors' committee¹ does not come into being, and accordingly cannot act, until the administrator² has issued a certificate in the specified form³ of its due constitution⁴; and no person may act as a member of the committee unless and until he has agreed to do so⁵. The administrator's certificate of the committee's due constitution must not be issued unless and until at least three of the persons who are to be members of the committee have agreed to act, and must be issued as soon as reasonably practicable thereafter⁶. As and when the others (if any) agree to act, the administrator must issue an amended certificate in the specified form⁷.

The certificate, and any amended certificate, must be filed with the court⁸ and a copy sent to the registrar of companies by the administrator, as soon as reasonably practicable⁹.

If after the first establishment of the committee there is any change in its membership, the administrator must as soon as reasonably practicable report the change to the court and the registrar of companies in the specified form¹⁰.

1 As to the establishment and constitution of the creditors' committee see para 298 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.51(1), Sch 4 Form 2.26B (r 2.51, Sch 4 Form 2.26B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.51(1) (as substituted: see note 3 supra).

5 Ibid r 2.51(2) (as substituted: see note 3 supra). Unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by a person's proxy-holder or representative under the Companies Act 1985 s 375 (see COMPANIES vol 14 (2009) PARA 661) present at the meeting establishing the committee: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.51(2) (as so substituted).

6 Ibid r 2.51(3) (as substituted: see note 3 supra).

7 Ibid r 2.51(4) (as substituted: see note 3 supra).

8 For the meaning of 'file with the court' see para 129 note 3 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

9 Insolvency Rules 1986, SI 1986/1925, r 2.51(5) (as substituted: see note 3 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

10 Ibid r 2.51(6) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

299 Formalities of establishment

TEXT AND NOTES--SI 1986/1925 r 2.51 amended: SI 2009/2472, SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/300. Representation of committee members.

300. Representation of committee members.

A member of the creditors' committee¹ may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose². A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member³. The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient⁴. No member may be represented by a body corporate, a person who is an undischarged bankrupt or a disqualified director or a person who is subject to a bankruptcy restrictions order, a bankruptcy restrictions undertaking or an interim bankruptcy restrictions order⁵. No person can on the same committee, act at one and the same time as representative of more than one committee-member⁶. Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature⁷.

1 As to the establishment and constitution of the creditors' committee see para 298 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.55(1) (r 2.55 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.55(2) (as substituted: see note 2 supra). For this purpose, any proxy or any authorisation under the Companies Act 1985 s 375 (see COMPANIES vol 14 (2009) PARA 661) in relation to any meeting of creditors of the company must, unless it contains a statement to the contrary, be treated as a letter of authority to act generally signed by or on behalf of the committee-member: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.55(2) (as so substituted). As to the meaning of 'company' see para 212 note 1 ante.

4 Ibid r 2.55(3) (as substituted: see note 2 supra).

5 Ibid r 2.55(4) (as substituted (see note 2 supra); and amended by SI 2004/584).

6 Insolvency Rules 1986, SI 1986/1925, r 2.55(5) (as substituted: see note 2 supra).

7 Ibid r 2.55(6) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

300 Representation of committee members

TEXT AND NOTE 3--SI 1986/1925 r 2.55(2) amended: SI 2009/2472.

TEXT AND NOTE 5--SI 1986/1925 r 2.55(4) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/301. Resignation and termination of membership, and removal.

301. Resignation and termination of membership, and removal.

A member of the creditors' committee¹ may resign by notice in writing delivered to the administrator².

Membership of the committee is automatically terminated if the member:

- 610 (1) becomes bankrupt³; or
- 611 (2) is neither present nor represented at three consecutive meetings of the committee⁴; or
- 612 (3) ceases to be, or is found never to have been, a creditor⁵.

A committee-member may be removed by resolution at a meeting of creditors⁶.

1 As to the establishment and constitution of the creditors' committee see para 298 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.56 (rr 2.56-2.58 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.57(1)(a) (r 2.57 as substituted (see note 2 supra); and r 2.57(1)(a) amended by SI 2004/584). If the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee: Insolvency Rules 1986, SI 1986/1925, r 2.57(2) (as so substituted).

4 Ibid r 2.57(1)(b) (as substituted: see note 2 supra). A person's membership is not terminated under this provision if at the third of those meetings it is resolved that this provision is not to apply in his case: r 2.57(1)(b) (as so substituted). As to representation see para 300 ante.

5 Ibid r 2.57(1)(c) (as substituted: see note 2 supra).

6 Ibid r 2.58 (as substituted: see note 2 supra). At least 14 days' notice must be given of the intention to move such a resolution: r 2.58 (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

301 Resignation and termination of membership, and removal

TEXT AND NOTE 5--SI 1986/1925 r 2.57(1)(c) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/302. Vacancies.

302. Vacancies.

If there is a vacancy in the membership of the creditors' committee¹, the vacancy need not be filled if the administrator² and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below the minimum required³. The administrator may appoint any creditor⁴ to fill the vacancy, if a majority of the other members of the committee agree to the appointment, and the creditor concerned consents to act⁵.

1 As to the establishment and constitution of the creditors' committee see para 298 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.59(1), (2) (r 2.59 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the minimum number of the members required see the Insolvency Rules 1986, SI 1986/1925, r 2.50(1); and para 298 ante.

4 Is any creditor who is qualified under the Insolvency Rules 1986, SI 1986/1925 (as amended) to be a member of the committee: r 2.59(3) (as substituted: see note 3 supra). As to qualification for membership see para 298 ante.

5 Ibid r 2.59(3) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

302 Vacancies

TEXT AND NOTES--SI 1986/1925 r 2.59(4), (5) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/303. Expenses.

303. Expenses.

The administrator¹ must, out of the assets of the company², defray any reasonable travelling expenses directly incurred by members of the creditors' committee³ or their representatives⁴ in relation to their attendance at the committee's meetings⁵, or otherwise on the committee's business, as an expense of the administration⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 As to the establishment and constitution of the creditors' committee see para 298 ante.

4 As to representation see para 300 ante.

5 As to committee meetings see para 305 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 2.63(1) (r 2.63 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

This does not apply to any meeting of the committee held within six weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator: Insolvency Rules 1986, SI 1986/1925, r 2.63(2) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(A) Establishment, Constitution and Membership/304. Members' dealings with the company.

304. Members' dealings with the company.

Membership of the creditors' committee¹ does not prevent a person from dealing with the company² while the company is in administration³, provided that any transactions in the course of such dealings are in good faith and for value⁴. The court⁵ may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this provision, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction⁶.

1 As to the establishment and constitution of the creditors' committee see para 298 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'in administration' see para 214 note 4 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.64(1) (r 2.64 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 2.64(2) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(B) Meetings, Voting and Resolutions/305. Functions and meetings.

(B) MEETINGS, VOTING AND RESOLUTIONS

305. Functions and meetings.

The creditors' committee¹ must assist the administrator² in discharging his functions, and act in relation to him in such manner as may be agreed from time to time³. To this end, the committee may require the administrator to attend on the committee at any reasonable time (of which he is given at least seven days' notice)⁴ and to provide the committee with information about the exercise of his functions⁵.

Subject as follows, meetings of the committee must be held when and where determined by the administrator⁶. The administrator must call a first meeting of the committee not later than six weeks after its first establishment, and thereafter he must call a meeting:

- 613 (1) if so requested by a member of the committee or his representative⁷; and
- 614 (2) for a specified date, if the committee has previously resolved that a meeting be held on that date⁸.

The administrator must give seven days' written notice of the venue⁹ of any meeting to every member of the committee (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member¹⁰.

1 As to the establishment and constitution of the creditors' committee see para 298 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.52(1) (r 2.52 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 57(3)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. Where the committee resolves to require the attendance of the administrator under this provision, the notice to him must be in writing signed by the majority of the members of the committee for the time being: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.62(1) (r 2.62 added by SI 2002/1307; and the Insolvency Rules 1986, SI 1986/1925, rr 2.1, 2.62 substituted by SI 2003/1730). A member's representative may sign for the administrator: Insolvency Rules 1986, SI 1986/1925, r 2.62(1) (as so substituted). The meeting at which the administrator's attendance is required must be fixed by the committee for a business day, and must be held at such time and place as he determines: r 2.62(2) (as so substituted). For the meaning of 'business day' see para 113 note 4 ante.

5 Insolvency Act 1986 Sch B1 para 57(3)(b) (as added: see note 4 supra).

6 Insolvency Rules 1986, SI 1986/1925, r 2.52(2) (as substituted: see note 3 supra).

7 Ibid r 2.52(3)(a) (as substituted: see note 3 supra). Any such meeting must be held within 14 days of the request being received by the administrator: r 2.52(3)(a) (as so substituted).

8 Ibid r 2.52(3)(b) (as substituted: see note 3 supra).

9 For the meaning of 'venue' see para 91 note 7 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 2.52(4) (as substituted: see note 3 supra). Waiver may be signified either at or before the meeting: r 2.52(4) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

305 Functions and meetings

TEXT AND NOTES--SI 1986/1925 r 2.52 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(B) Meetings, Voting and Resolutions/306. The chairman at meetings.

306. The chairman at meetings.

The chairman at any meeting of the creditors' committee¹ must be the administrator² or a person nominated by him in writing to act³. A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company⁴ or an employee of the administrator or his firm who is experienced in insolvency matters⁵.

1 As to the establishment and constitution of the creditors' committee see para 298 ante. As to committee meetings see para 305 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.53(1) (r 2.53 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

This is subject to the proviso that where the administrator attends a meeting at the committee's request under the Insolvency Act 1986 Sch B1 para 57(3)(a) (as added) (see para 305 ante), the members of the committee may elect any one of their number to be chairman of the meeting, in place of the administrator or a nominee of his: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.1(2) (substituted by SI 2003/1730); Insolvency Rules 1986, SI 1986/1925, r 2.53(1) (as so substituted); r 2.62(1), (3) (r 2.62 added by SI 2002/1307; and substituted by SI 2003/1730).

4 Insolvency Rules 1986, SI 1986/1925, r 2.53(2)(a) (as substituted: see note 3 supra). As to the meaning of 'company' see para 212 note 1 ante. As to qualification to act as an insolvency practitioner see para 8 et seq ante.

5 Ibid r 2.53(2)(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

306 The chairman at meetings

TEXT AND NOTES--SI 1986/1925 r 2.53 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(B) Meetings, Voting and Resolutions/307. Quorum.

307. Quorum.

A meeting of the creditors' committee¹ is duly constituted if due notice of it has been given to all the members, and at least two members are present or represented².

1 As to the establishment and constitution of the creditors' committee see para 298 ante. As to committee meetings see para 305 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.54 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(B) Meetings, Voting and Resolutions/308. Voting and resolutions.

308. Voting and resolutions.

At any meeting of the creditors' committee¹, each member of it (whether present himself, or by his representative²) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it³. Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting⁴. A record of each resolution must be signed by the chairman⁵ and placed in the company's⁶ minute book⁷.

1 As to the establishment and constitution of the creditors' committee see para 298 ante. As to committee meetings see para 305 ante.

2 As to representation see para 300 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.60(1) (r 2.60 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.60(2) (as substituted: see note 3 supra).

5 As to the chairman see para 306 ante.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.60(3) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

308 Voting and resolutions

TEXT AND NOTES--SI 1986/1925 r 2.60 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/E. CREDITORS' COMMITTEES/(B) Meetings, Voting and Resolutions/309. Resolutions of creditors' committee by post.

309. Resolutions of creditors' committee by post.

The administrator¹ may seek to obtain the agreement of members of the creditors' committee² to a resolution by sending to every member (or his representative³ designated for the purpose) a copy of the proposed resolution⁴. Any member of the committee may, within seven business days⁵ from the date of the administrator sending out a resolution, require him to summon a meeting of the committee to consider matters raised by the resolution⁶. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it⁷. A copy of every resolution passed under this provision, and a note that the committee's concurrence was obtained, must be placed in the company's⁸ minute book⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the establishment and constitution of the creditors' committee see para 298 ante.

3 As to representation see para 300 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.61(1) (r 2.61 added by SI 2002/1307; and substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

Where the administrator makes use of this procedure, he must send out to members of the committee or their representatives (as the case may be) a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent: Insolvency Rules 1986, SI 1986/1925, r 2.61(2) (as so added and substituted).

5 For the meaning of 'business day' see para 113 note 4 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.61(3) (as added and substituted: see note 4 supra).

7 Ibid r 2.61(4) (as added and substituted: see note 4 supra).

8 As to the meaning of 'company' see para 212 note 1 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 2.61(5) (as added and substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/F. COMPANY MEETINGS/310. Venue and conduct of company meeting.

F. COMPANY MEETINGS

310. Venue and conduct of company meeting.

The administrator¹ of a company² may call a meeting of members of the company³. Where he summons such a meeting he must fix a venue⁴ for it having regard to the members' convenience⁵.

The chairman of the meeting must be the administrator or a person nominated by him in writing to act in his place⁶. If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day⁷, to the business day immediately following⁸. Subject to this, the meeting must be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association⁹.

The chairman of the meeting must cause minutes of its proceedings to be entered in the company's minute book¹⁰.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 62 (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 For the meaning of 'venue' see para 91 note 7 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.49(1) (r 2.49 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.49(2) (as substituted: see note 5 supra). A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company (see para 8 et seq ante) or an employee of the administrator or his firm who is experienced in insolvency matters: r 2.49(3) (as so substituted).

7 For the meaning of 'business day' see para 113 note 4 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.49(4) (as substituted: see note 5 supra).

9 Ibid r 2.49(5) (as substituted: see note 5 supra). The meeting is required to be summoned and conducted in accordance with the Companies Act 1985 Pt XI Ch IV (ss 366-383) (as amended) (see COMPANIES vol 14 (2009) PARA 629 et seq); Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (r 0.2 substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.49(5) (as so substituted). These provisions do not apply where the laws of a member state and not the laws of England and Wales apply in relation to the conduct of the meeting, in which event the meeting must be summoned and conducted in accordance with the constitution of the company and the laws of the relevant member state apply to the conduct of the meeting: r 2.49(7) (as so substituted).

10 Ibid r 2.49(7) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

310 Venue and conduct of company meeting

TEXT AND NOTE 9--SI 1986/1925 r 2.49(5), (6) substituted by r 2.49(5A): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(iv) Process of Administration/G. PROGRESS REPORTS/311. Reports to creditors.

G. PROGRESS REPORTS

311. Reports to creditors.

'Progress report' means a report which includes:

- 615 (1) details of the court¹ where the proceedings are and the relevant court reference number²;
- 616 (2) full details of the company's³ name, the address of its registered office and its registered number⁴;
- 617 (3) full details of the administrator's⁵ name and address, date of appointment and the name and address of the appointor, including any changes in office-holder, and, in the case of joint administrators, their functions⁶;
- 618 (4) details of any extensions to the initial period of appointment⁷;
- 619 (5) details of progress during the period of the report, including a receipts and payments account⁸;
- 620 (6) details of any assets that remain to be realised⁹; and
- 621 (7) any other relevant information for the creditors¹⁰.

The report must cover:

- 622 (a) the period of six months commencing on the date that the company entered administration¹¹, and every subsequent period of six months¹²; and
- 623 (b) when the administrator ceases to act, any period from the date of the previous report, if any, and from the date that the company entered administration if there is no previous report, until the time that the administrator ceases to act¹³.

The administrator must send a copy of the progress report, attached to the specified form¹⁴, within one month of the end of the period covered by the report¹⁵, to the creditors¹⁶, the court¹⁷, and the registrar of companies¹⁸.

If the administrator makes default in complying with these provisions, he is liable to a fine and, for continued contravention, to a daily default fine¹⁹.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 Insolvency Rules 1986, SI 1986/1925, r 2.47(1)(a) (rr 2.1, 2.47, Sch 4 Form 2.24B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.47(1)(b) (as substituted: see note 2 supra).

5 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.47(1)(c) (as substituted: see note 2 supra). The reference in the text to the functions of joint administrators is a reference to the functions of joint administrators as set out in the statement made for the purposes of the Insolvency Act 1986 Sch B1 para 100(2) (as added) (see para 259 ante): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.1(2) (as substituted: see note 2 supra); r 2.47(1)(c) (as so substituted).

7 Ibid r 2.47(1)(d) (as substituted: see note 2 supra).

8 Ibid r 2.47(1)(e) (as substituted: see note 2 supra). A receipts and payments account must state what assets of the company have been realised, for what value, and what payments have been made to creditors or others, and must be in the form of an abstract showing receipts and payments during the period of the report; and where the administrator has ceased to act, the receipts and payments account must include a statement as to the amount paid to unsecured creditors by virtue of the application of the Insolvency Act 1986 s 176A (as added) (see para 322 post): Insolvency Rules 1986, SI 1986/1925, r 2.47(2) (as so substituted).

9 Ibid r 2.47(1)(f) (as substituted: see note 2 supra).

10 Ibid r 2.47(1)(g) (as substituted: see note 2 supra). The court may, on the administrator's application, make such order in respect of the content of the report as it thinks fit: r 2.47(5) (as so substituted).

11 For the meaning of 'enters administration' see para 212 note 1 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 2.47(3)(a) (as substituted: see note 2 supra).

13 Ibid r 2.47(3)(b) (as substituted: see note 2 supra).

14 As to the specified form see ibid r 2.47(4), Sch 4 Form 2.24B (as substituted: see note 2 supra).

15 The court may, on the administrator's application, extend this period: ibid r 2.47(5) (as substituted: see note 2 supra).

16 Ibid r 2.47(4)(a) (as substituted: see note 2 supra).

17 Ibid r 2.47(4)(b) (as substituted: see note 2 supra).

18 Ibid r 2.47(4)(c) (as substituted: see note 2 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

19 Ibid r 2.47(6) (as substituted: see note 2 supra). As to daily default fines see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

311 Reports to creditors

TEXT AND NOTES--SI 1986/1925 r 2.47(1)(da)-(dc), (fa), (2A), (2B), (3A), (3B) added, r 2.47(2), (3), (4) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/A. IN GENERAL/312. General powers and functions.

(v) Powers and Functions of Administrator

A. IN GENERAL

312. General powers and functions.

The administrator¹ of a company² may do anything necessary or expedient for the management of the affairs, business³ and property⁴ of the company⁵. In particular, the administrator may:

- 624 (1) take possession of, collect and get in the property of the company and, for that purpose, take such proceedings as may seem to him expedient⁶;
- 625 (2) sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, sell, feu, hire out or otherwise dispose of the property of the company by public roup or private bargain⁷;
- 626 (3) raise or borrow money and grant security⁸ therefor over the property of the company⁹;
- 627 (4) appoint a solicitor¹⁰ or accountant or other professionally qualified person to assist him in the performance of his functions¹¹;
- 628 (5) bring and defend any action or other legal proceedings in the name of and on behalf of the company¹²;
- 629 (6) refer to arbitration any question affecting the company¹³;
- 630 (7) effect and maintain insurances in respect of the business and property of the company¹⁴;
- 631 (8) use the company's seal¹⁵;
- 632 (9) do all acts and to execute in the name and on behalf of the company any deed, receipt or other document¹⁶;
- 633 (10) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company¹⁷;
- 634 (11) appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees¹⁸;
- 635 (12) do all such things, including the carrying out of works, as may be necessary for the realisation of the property of the company¹⁹;
- 636 (13) make any payment which is necessary or incidental to the performance of his functions²⁰;
- 637 (14) carry on the business of the company²¹;
- 638 (15) establish subsidiaries of the company²²;
- 639 (16) transfer to subsidiaries of the company the whole or any part of the business and property of the company²³;
- 640 (17) grant or accept a surrender of a lease or tenancy of any of the property of the company, and take a lease or tenancy of any property required or convenient for the business of the company²⁴;
- 641 (18) make any arrangement or compromise on behalf of the company²⁵;
- 642 (19) call up any uncalled capital of the company²⁶;
- 643 (20) rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and receive dividends, and accede to trust deeds for the creditors of any such person²⁷;

- 644 (21) present or defend a petition for the winding up of the company²⁸;
- 645 (22) change the situation of the company's registered office²⁹;
- 646 (23) remove a director of the company³⁰;
- 647 (24) appoint a director of the company (whether or not to fill a vacancy)³¹;
- 648 (25) call a meeting of members or creditors of the company³²;
- 649 (26) make a distribution to creditors³³;
- 650 (27) apply to the court³⁴ for directions in connection with his functions³⁵; and
- 651 (28) (in relation to insurers only), make any payments due to a creditor or any payments on account of any sum which may become due to a creditor³⁶.

In exercising his functions under these provisions, the administrator of a company acts as its agent³⁷.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 As to the meaning of 'business' see para 156 note 1 ante.

4 As to the meaning of 'property' see para 489 note 8 post.

5 Insolvency Act 1986 s 8, Sch B1 para 59(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. The administrator must manage the company's affairs, business and property in accordance with: (1) any proposals approved under the Insolvency Act 1986 Sch B1 para 53 (as added) (see para 290 ante); (2) any revision of those proposals which is made by him and which he does not consider substantial; and (3) any revision of those proposals approved under Sch B1 para 54 (as added) (see para 292 ante): Sch B1 para 68(1) (as so added). This is subject to Sch B1 para 68(2) (as added) (see note 35 infra): Sch B1 para 68(1) (as so added).

A provision of Sch B1 (as added) which expressly permits the administrator to do a specified thing is without prejudice to the generality of Sch B1 para 59(1) (as added): Sch B1 para 59(2) (as so added). A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers: Sch B1 para 59(3) (as so added).

6 Ibid Sch 1 para 1, Sch B1 para 60 (Sch B1 para 60 as added: see note 5 supra). The administrator must on his appointment take custody or control of all the property to which he thinks the company is entitled: Sch B1 para 67 (as so added). The administrator may do all things incidental to the exercise of the powers conferred by Sch 1 (as amended): Sch 1 para 23.

7 Ibid Sch 1 para 2 (amended by the Abolition of Feudal Tenure (Scotland) Act 2000 s 76(2), Sch 13 Pt I). Administrators are permitted to sell a company's assets in advance of their proposals being approved by creditors (ie under the Insolvency Act 1986 Sch B1 para 53 (as added) or Sch B1 para 54 (as added) (see paras 290, 293 ante)) without the direction of the court under Sch B1 para 68(2) (as added) (see note 35 infra): see *Re Transbus International Ltd* [2004] EWHC 932 (Ch), [2004] 2 All ER 911. As to the administrator's powers to dispose of property see further para 357 et seq post.

8 For the meaning of 'security' see para 109 note 10 ante.

9 Insolvency Act 1986 Sch 1 para 3.

10 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

11 Insolvency Act 1986 Sch 1 para 4.

12 Ibid Sch 1 para 5.

13 Ibid Sch 1 para 6.

14 Ibid Sch 1 para 7.

15 Ibid Sch 1 para 8.

16 Ibid Sch 1 para 9.

17 Ibid Sch 1 para 10.

18 Ibid Sch 1 para 11.

19 Ibid Sch 1 para 12.

20 Ibid Sch 1 para 13. As to the position under the former provision see para 163 note 20 ante. An administrator may also make a payment otherwise than in accordance with Sch 1 para 13 or Sch B1 para 65 (as added) (see the text and note 33 infra) if he thinks it likely to assist the purpose of administration: see Sch B1 para 66 (as added: see note 5 supra). For the meaning of 'the purpose of administration' see para 214 ante.

21 Ibid Sch 1 para 14.

22 Ibid Sch 1 para 15.

23 Ibid Sch 1 para 16.

24 Ibid Sch 1 para 17.

25 Ibid Sch 1 para 18.

26 Ibid Sch 1 para 19. In the case of administration orders relating to limited liability partnerships, this power is expressed as the power to enforce any rights the limited liability partnership has against the members under the terms of the limited liability partnership agreement: see Sch 1 para 19; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1306 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'limited liability partnership agreement' see para 997 note 1 post.

27 Insolvency Act 1986 Sch 1 para 20.

28 Ibid Sch 1 para 21.

29 Ibid Sch 1 para 22.

30 Ibid Sch B1 para 61(a) (as added: see note 5 supra).

31 Ibid Sch B1 para 61(b) (as added: see note 5 supra).

32 Ibid Sch B1 para 62 (as added: see note 5 supra). As to the calling of creditors' meetings see para 275 et seq ante; and as to the calling of company meetings see para 310 ante.

33 Ibid Sch B1 para 65(1) (as added: see note 5 supra). Section 175 (see para 763 post) applies in relation to a distribution under Sch B1 para 65 (as added) as it applies in relation to a winding up: Sch B1 para 65(2) (as so added). A payment may not be made by way of distributions under Sch B1 para 65 (as added) to a creditor of the company who is neither secured nor preferential unless the court gives permission: Sch B1 para 65(3) (as so added). As to distributions see further the text and note 20 supra; and para 318 et seq post.

34 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

35 Insolvency Act 1986 Sch B1 para 63 (as added: see note 5 supra). If the court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator must comply with the directions: Sch B1 para 68(2) (as so added). The court may give directions under Sch B1 para 68(2) (as added) only if: (1) no proposals have been approved under Sch B1 para 53 (as added) (see para 290 ante); (2) the directions are consistent with any proposals or revision approved under Sch B1 para 53 (as added) or Sch B1 para 54 (as added) (see paras 290, 293 ante); (3) the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under Sch B1 para 53 (as added) or Sch B1 para 54 (as added); or (4) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under Sch B1 para 53 (as added) or Sch B1 para 54 (as added): Sch B1 para 68(3) (as so added). Note that these provisions do not prevent administrators from selling a company's assets in advance of their proposals being approved by creditors (ie under Sch B1 para 53 (as added) or Sch B1 para 54 (as added)) without the direction of the court since they are only required to act in accordance with the directions of the court if those directions

are given: see Sch B1 para 68(2) (as so added); and *Re Transbus International Ltd* [2004] EWHC 932 (Ch), [2004] 2 All ER 911.

36 Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 8(1) (Schedule para 8 renumbered, and Schedule para 8(3) amended, by SI 2003/2134). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. Any payments to a creditor made pursuant to this provision must not exceed, in aggregate, the amount which the administrator reasonably considers that the creditor would be entitled to receive on a distribution of the insurer's assets in a winding up: Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 8(2) (as so renumbered). These powers may be exercised until an initial creditors' meeting (see para 286 et seq ante) but may only be exercised thereafter: (1) if the administrator has laid before that meeting or any subsequent creditors' meeting ('the relevant meeting') a statement containing an estimate of the aggregate amount of the insurer's assets and liabilities (whether actual, contingent or prospective) and all payments which the administrator proposes to make to creditors pursuant to Schedule para 8(1) (as renumbered) (including any assumptions which the administrator has made in calculating that estimate) (Schedule para 8(3)(a), (4) (as so renumbered and amended)); and (2) with the consent of the court (Schedule para 8(3)(b) (as so renumbered)).

37 Insolvency Act 1986 Sch B1 para 69 (as added: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

312 General powers and functions

NOTE 10--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

NOTE 20--See *Re Collins & Aikman Europe SA* [2006] EWHC 1343 (Ch), [2007] 1 BCLC 182 (co-ordinated strategy of selling businesses of group of European companies; strategy supported by administrators' assurances to creditors that their position under local law would be respected if no secondary proceedings were brought in national jurisdictions; payments made pursuant to assurances were likely to assist achievement of purpose of administration).

NOTE 33--See *Power v Revenue and Customs Comrs; Re Farepak Food and Gifts Ltd* [2009] EWHC 2580 (Ch), [2009] All ER (D) 286 (Oct).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/A. IN GENERAL/313. Company not to exercise management powers without consent.

313. Company not to exercise management powers without consent.

A company¹ in administration² or an officer³ of a company in administration may not exercise a management power⁴ without the consent⁵ of the administrator⁵.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'in administration' see para 214 note 4 ante.

3 For the meaning of 'officer' see para 690 post.

4 I.e. a power which could be exercised so as to interfere with the exercise of the administrator's powers (see para 312 ante): Insolvency Act 1986 s 8, Sch B1 para 64(2)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. It is immaterial whether the power is conferred by an enactment or an instrument: Insolvency Act 1986 Sch B1 para 64(2)(b) (as so added).

5 Consent may be general or specific: *ibid* Sch B1 para 64(2)(c) (as added: see note 4 *supra*).

6 *Ibid* Sch B1 para 64(1) (as added: see note 4 *supra*).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/A. IN GENERAL/314. Powers to get in the company's property and obtain information.

314. Powers to get in the company's property and obtain information.

The provisions dealing with the getting in of the company's property¹, the duty of certain persons to co-operate in giving information relating to the company's affairs² and the powers of the court to summon persons before it to give information about the company's affairs³ which apply where the company has gone into liquidation apply also where a company enters administration.

1 See the Insolvency Act 1986 s 234 (as amended); and para 675 post.

2 See *ibid* s 235 (as amended); and para 678 post.

3 See *ibid* ss 236, 237; and paras 679-687 post. The court will prevent a creditor from procuring a private examination via the administrator for its own benefit: *Re James McHale Automobiles Ltd* [1997] 1 BCLC 273.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/A. IN GENERAL/315. Adjustment of prior and other transactions.

315. Adjustment of prior and other transactions.

The provisions relating to the adjustment of prior and other transactions¹ and, in particular, to transactions at an undervalue, preferences², extortionate credit transactions³, avoidance of certain floating charges⁴ and unenforceability of liens on books⁵ which apply when a company has gone into liquidation apply also where a company enters administration. The administrator also has power to apply to the court for an order in relation to transactions defrauding creditors⁶.

1 See the Insolvency Act 1986 ss 238-246 (as amended); and para 843 et seq post.

2 As to transactions at an undervalue and preferences see *ibid* ss 238-241 (as amended); and para 843 et seq post. As to transactions entered into before 29 December 1986 see para 434 note 3 post.

3 See *ibid* s 244 (ss 244-246, 424(1)(a) amended by the Enterprise Act 2002 s 248(1), (2), Sch 17 paras 9, 30-32, 36). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. See paras 857-860 post.

4 See *ibid* s 245 (as amended: see note 3 supra); and paras 861-865 post.

5 See *ibid* s 246 (as amended: see note 3 supra); and para 676 post.

6 *Ibid* s 424(1)(a) (as amended: see note 3 supra). As to transactions defrauding creditors see para 853 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/A. IN GENERAL/316. Disqualification of directors: duty to report.

316. Disqualification of directors: duty to report.

Where it appears to the administrator that the conditions imposing a duty on the court to disqualify unfit directors of insolvent companies are satisfied¹, the administrator is under a duty to report the matter to the Secretary of State².

The Secretary of State or the official receiver may require the administrator to furnish him with such information with respect to any person's conduct as a director of the company and to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director as the Secretary of State or the official receiver may reasonably require³.

1 Ie the conditions contained in the Company Directors Disqualification Act 1986 s 6(1): see para 1121 post.

2 Ibid s 7(3)(c) (substituted by the Enterprise Act 2002 s 248(1), (2), Sch 17 paras 40, 42). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the duty to report see para 1125 post. As to the Secretary of State see para 11 note 10 ante.

3 See ibid s 7(4); and para 1127 post. As to the official receiver see para 503 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/A. IN GENERAL/317. Power to ensure continuation of essential supplies by utilities.

317. Power to ensure continuation of essential supplies by utilities.

Where a company¹ enters administration² and a request is made by or with the concurrence of the administrator³ for the giving after the effective date⁴ of:

- 652 (1) a supply of gas by a gas supplier⁵;
- 653 (2) a supply of electricity by an electricity supplier⁶;
- 654 (3) a supply of water by a water undertaker⁷; or
- 655 (4) a supply of communications services⁸ by a provider of a public electronic communications service⁹,

the supplier:

- 656 (a) may make it a condition of the giving of the supply that the administrator personally guarantees the payment of any charges in respect of that supply¹⁰; but
- 657 (b) must not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid¹¹.

No such power to ensure the continuation of supplies by a trader, other than the utilities described above, exists, subject to the terms of the underlying supply contract¹².

1 As to the meaning of 'company' see para 212 note 1 ante.

2 Insolvency Act 1986 s 233(1)(a) (s 233(1)(a), (4)(a) substituted by the Enterprise Act 2002 s 248(1), (2), Sch 17 paras 9, 22). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'enters administration' see para 212 note 1 ante. The Insolvency Act 1986 s 233 (as amended) is also modified in its application to insolvency proceedings involving limited liability partnerships: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

3 For the meaning of 'administrator' see para 212 note 1 ante.

4 For these purposes, 'the effective date' is the date on which the company entered administration: Insolvency Act 1986 s 233(4)(a) (as substituted: see note 2 supra).

5 Insolvency Act 1986 s 233(3)(a) (substituted by the Gas Act 1995 s 16(1), Sch 4 para 14(1)).

6 Insolvency Act 1986 s 233(3)(b) (substituted by the Utilities Act 2000 s 108, Sch 6 para 47(1), (2)(a)).

7 Insolvency Act 1986 s 233(3)(c) (amended by the Water Act 1989 s 190(1), Sch 25 para 78(1)).

8 'Communications services' do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003: see TELECOMMUNICATIONS vol 97 (2010) PARA 60); Insolvency Act 1986 s 233(5)(d) (substituted by the Communications Act 2003 s 406(1), Sch 17 para 82(1), (2)(b)).

9 Insolvency Act 1986 s 233(3)(d) (substituted by the Communications Act 2003 Sch 17 para 82(1), (2)(a)).

10 Insolvency Act 1986 s 233(2)(a).

11 Ibid s 233(2)(b).

12 See *Leyland DAF Ltd v Automotive Products Ltd* [1994] 1 BCLC 245 at 250, [1993] BCC 389 at 392 (supply of components).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(A) Distributions Generally/318. Notification of distributions.

B. DISTRIBUTIONS TO CREDITORS

(A) DISTRIBUTIONS GENERALLY

318. Notification of distributions.

The administrator¹ may make a distribution to a creditor of the company² but he may not make a distribution to a creditor who is neither secured nor preferential unless the court³ gives permission⁴. Where the administrator makes, or proposes to make, a distribution to any class of creditors⁵, the administrator must give notice to the creditors of his intention to declare and distribute a dividend⁶.

Where it is intended that the distribution is to be a sole or final dividend, the administrator must, after the date specified in such notice:

- 658 (1) defray any outstanding expenses of a liquidation⁷ or provisional liquidation that immediately preceded the administration⁸;
- 659 (2) defray any items payable in accordance with specified provisions⁹;
- 660 (3) defray any amounts¹⁰ which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which he had¹¹ custody or control¹²; and
- 661 (4) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved¹³.

The court may, on the application¹⁴ of any person, postpone the date specified in the notice¹⁵.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

4 Insolvency Act 1986 s 8, Sch B1 para 65(1), (3) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). See para 312 text and note 33 ante. As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Where the distribution is to a particular class of creditors, references in the Insolvency Rules 1986, SI 1986/1925, rr 2.68-2.105 (as substituted) to creditors are, in so far as the context requires, references to that class of creditors only: r 2.68(1) (rr 2.1, 2.68 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.68(1), (2) (as substituted: see note 5 supra). As to the distribution of dividends see r 2.95 (as substituted); and para 346 post.

7 ie including the items mentioned in ibid r 4.218 (as amended) (see para 810 post): see r 2.68(3)(a) (as substituted: see note 5 supra).

8 Ibid r 2.68(3)(a) (as substituted: see note 5 supra).

9 Ibid r 2.68(3)(b) (as substituted: see note 5 supra). The specified provisions referred to in the text are the provisions of the Insolvency Act 1986 Sch B1 para 99 (as added) (see para 251 ante); Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.68(3)(b) (as substituted: see note 5 supra).

10 These amounts include any debts or liabilities and the administrator's own remuneration and expenses: ibid r 2.68(3)(c) (as substituted: see note 5 supra). For the meaning of 'debt' see para 749 post.

11 Ie in accordance with the provisions of the Insolvency Act 1986 Sch B1 para 99 (as added) (see para 251 ante): see the Insolvency Rules 1986, SI 1986/1925, r 2.68(3)(c) (as substituted: see note 5 supra).

12 Ibid r 2.68(3)(c) (as substituted: see note 5 supra).

13 Ibid r 2.68(3)(d) (as substituted: see note 5 supra).

14 As to the making of applications see para 1055 et seq post.

15 Insolvency Rules 1986, SI 1986/1925, r 2.68(4) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

318 Notification of distributions

NOTES 3, 4--See *Power v Revenue and Customs Comrs; Re Farepak Food and Gifts Ltd* [2009] EWHC 2580 (Ch), [2009] All ER (D) 286 (Oct).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(A) Distributions Generally/319. Debts of insolvent company to rank equally.

319. Debts of insolvent company to rank equally.

Debts¹ other than preferential debts rank equally between themselves in the administration and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves².

1 For the meaning of 'debt' see para 749 post.

2 Insolvency Rules 1986, SI 1986/1925 r 2.69 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(A) Distributions Generally/320. Calculation and distribution of dividends.

320. Calculation and distribution of dividends.

In the calculation and distribution of a dividend the administrator¹ must make provision for:

- 662 (1) any debts² which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs³;
- 663 (2) any debts which are the subject of claims which have not yet been determined⁴; and
- 664 (3) disputed proofs and claims⁵.

A creditor⁶ who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved⁷. When, however, he has proved that debt, he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive⁸.

No claim lies against the administrator for a dividend, but if he refuses to pay a dividend the court⁹ may, if it thinks fit, order him to pay it and also to pay, out of his own money:

- 665 (a) interest on the dividend, at the rate for the time being specified¹⁰, from the time when it was withheld¹¹; and
- 666 (b) the costs of the proceedings in which the order to pay is made¹².

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'debt' see para 749 post.

3 Insolvency Rules 1986, SI 1986/1925, r 2.70(1)(a) (r 2.70 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to proving a debt see para 323 et seq post.

4 Insolvency Rules 1986, SI 1986/1925, r 2.70(1)(b) (as substituted: see note 3 supra).

5 Ibid r 2.70(1)(c) (as substituted: see note 3 supra).

6 As to references to a 'creditor' see para 318 note 5 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.70(2) (as substituted: see note 3 supra).

8 Ibid r 2.70(2)(a) (as substituted: see note 3 supra). Any dividends so payable must be paid before the money is applied to the payment of any such further dividend: r 2.70(2)(b) (as so substituted).

9 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

10 Interest is payable at the rate of 8% per annum: Insolvency Rules 1986, SI 1986/1925, r 2.70(3)(a) (as substituted: see note 3 supra); Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2).

11 Insolvency Rules 1986, SI 1986/1925, r 2.70(3)(a) (as substituted: see note 3 supra).

12 Ibid r 2.70(3)(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(A) Distributions Generally/321. Division of unsold assets.

321. Division of unsold assets.

The administrator¹ may, with the permission of the creditors' committee², or if there is no creditors' committee, the creditors³, divide in its existing form amongst the company's⁴ creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold⁵.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the creditors' committee see para 298 et seq ante.

3 As to references to a 'creditor' see para 318 note 5 ante.

4 As to the meaning of 'company' see para 212 note 1 ante.

5 Insolvency Rules 1986, SI 1986/1925 r 2.71 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

321 Division of unsold assets

TEXT AND NOTE 5--SI 1986/1925 r 2.71 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(A) Distributions Generally/322. Share of assets for unsecured creditors.

322. Share of assets for unsecured creditors.

Where a floating charge¹ relates to property² of a company which is in administration³, the administrator⁴ must make a prescribed⁵ part of the company's net property⁶ available for the satisfaction of unsecured debts⁷ and must not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts⁸.

These provisions do not apply to a company:

- 667 (1) if the company's property is less than the prescribed minimum⁹ and the administrator thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits¹⁰;
- 668 (2) if and in so far as they are disapplied by a voluntary arrangement¹¹ in respect of the company¹² or a compromise or arrangement¹³ agreed with creditors and members¹⁴; or
- 669 (3) if the administrator applies to the court¹⁵ for an order on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits¹⁶ and the court orders that the provisions do not apply¹⁷.

The costs associated with the prescribed part must be paid out of the prescribed part¹⁸.

1 For these purposes, 'floating charge' means a charge which is a floating charge on its creation and which is created after the first order under the Insolvency Act 1986 s 176A(2)(a) (as added) (see the text and notes 2-7 infra) comes into force: s 176A(9) (s 176A added by the Enterprise Act 2002 s 252). This provision has effect from 15 September 2003: see the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 2(1), Sch 1; and para 145 ante.

2 As to the meaning of 'property' see para 489 note 8 post.

3 For the meaning of 'in administration' see para 214 note 4 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 'Prescribed' means prescribed by order of the Secretary of State: Insolvency Act 1986 s 176A(9) (as added: see note 1 supra). Such an order must be made by statutory instrument and must be subject to annulment pursuant to a resolution of either House of Parliament (s 176A(8) (as so added)) and may include transitional or incidental provision (s 176A(9) (as so added)). An order prescribing part of a company's net property may, in particular, provide for its calculation as a percentage of the company's net property or as an aggregate of different percentages of different parts of the company's net property: s 176A(7) (as so added). As to the effect of the orders made under these provisions see notes 6, 7 infra. As to the Secretary of State see para 11 note 10 ante.

6 For these purposes, a company's net property is the amount of its property which would, but for ibid s 176A (as added), be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company: s 176A(6) (as added: see note 1 supra).

7 Ibid s 176A(2)(a) (as added: see note 1 supra). The prescribed part of the company's net property to be made available for the satisfaction of unsecured debts of the company pursuant to ibid s 176A (as added) must be calculated as follows: (1) where the company's net property does not exceed £10,000 in value, 50% of that

property; (2) where the company's net property exceeds £10,000 in value, the sum of 50% of the first £10,000 in value and 20% of that part of the company's net property which exceeds £10,000 in value (subject to a maximum of £600,000): Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097, art 3. As to the making of orders see note 5 supra.

8 Insolvency Act 1986 s 176A(2)(b) (as added: see note 1 supra). These provisions also apply where a company is in liquidation or where there is a provisional liquidator or a receiver: see para 773 post.

9 Ibid s 176A(3)(a) (as added: see note 1 supra). The minimum value of the company's net property is £10,000: Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097, art 2. As to the making of orders see note 5 supra.

10 Insolvency Act 1986 s 176A(3)(b) (as added: see note 1 supra).

11 Ie an arrangement approved in relation to the company under ibid Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

12 Insolvency Act 1986 s 176A(4)(a) (as added: see note 1 supra).

13 Ie under the Companies Act 1985 s 425 (as amended) (see COMPANIES vol 15 (2009) PARA 1425 et seq).

14 Insolvency Act 1986 s 176A(4)(b) (as added: see note 1 supra).

15 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

16 Insolvency Act 1986 s 176A(5)(a) (as added: see note 1 supra).

17 Ibid s 176A(5)(b) (as added: see note 1 supra).

18 Insolvency Rules 1986, SI 1986/1925, r 12.2(2) (added by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

322 Share of assets for unsecured creditors

TEXT AND NOTES--See also the Insolvency Act 1986 s 176ZA (added by the Companies Act 2006 s 1282(1)) under which property subject to a floating charge may, where necessary, be used to fund the general expenses of winding up in priority to the floating charge holder and to any preferential creditors to be paid out of that property.

NOTES 7, 8--See *Re Airbase (UK) Ltd; Thorniley v Revenue and Customs Comrs* [2008] EWHC 124 (Ch), [2008] 1 WLR 1516, [2008] 1 BCLC 437.

NOTE 13--Now under the Companies Act 2006 Pt 26 (ss 895-901): 1986 Act s 176A(4)(b) (amended by SI 2008/948).

NOTE 17--See *Re Hydroserve Ltd* [2007] All ER (D) 184 (Jun).

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(B) PROOF OF DEBTS

323. Proving a debt.

A person claiming to be a creditor¹ of the company² and wishing to recover his debt³ in whole or in part must (subject to any order of the court⁴ to the contrary) submit his claim in writing to the administrator⁵. A creditor who claims is referred to as 'proving' for his debt and a document by which he seeks to establish his claim is his 'proof'⁶. A proof must be made out by, or under the direction of, the creditor and signed by him or a person authorised in that behalf⁷, and must state:

- 670 (1) the creditor's name and address⁸;
- 671 (2) the total amount of his claim as at the date on which the company entered administration⁹, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off¹⁰;
- 672 (3) whether or not the claim includes outstanding uncapitalised interest¹¹;
- 673 (4) whether or not the claim includes value added tax¹²;
- 674 (5) whether the whole or any part of the debt falls within any, and if so, which categories of preferential debts¹³;
- 675 (6) particulars of how and when the debt was incurred by the company¹⁴;
- 676 (7) particulars of any security held, the date on which it was given and the value which the creditor puts on it¹⁵;
- 677 (8) details of any reservation of title in respect of goods to which the debt refers¹⁶; and
- 678 (9) the name, address and authority of the person signing the proof (if other than the creditor himself)¹⁷.

There must be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it¹⁸. The administrator may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof¹⁹.

1 As to references to a 'creditor' see para 318 note 5 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'debt' see para 749 post.

4 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

5 Insolvency Rules 1986, SI 1986/1925 r 2.72(1) (rr 2.1, 2.72 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 Insolvency Rules 1986, SI 1986/1925 r 2.72(2) (as substituted: see note 5 supra).

- 7 Ibid r 2.72(3)(a) (as substituted: see note 5 supra).
- 8 Ibid r 2.72(3)(b)(i) (as substituted: see note 5 supra).
- 9 For the meaning of 'enters administration' see para 212 note 1 ante.
- 10 Insolvency Rules 1986, SI 1986/1925 r 2.72(3)(b)(ii) (as substituted: see note 5 supra). Adjustments by way of set-off are made in accordance with r 2.85 (as substituted) (see para 336 post); r 2.72(3)(b)(ii) (as so substituted).
- 11 Ibid r 2.72(3)(b)(ii) (as substituted: see note 5 supra).
- 12 Ibid r 2.72(3)(b)(iv) (as substituted: see note 5 supra).
- 13 Ibid r 2.72(3)(b)(v) (as substituted: see note 5 supra). The reference in the text to categories of preferential debts is a reference to categories of preferential debts under the Insolvency Act 1986 s 386 (as amended) (see para 763 post); Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.72(3)(b)(v) (as so substituted).
- 14 Ibid r 2.72(3)(b)(vi) (as substituted: see note 5 supra).
- 15 Ibid r 2.72(3)(b)(vii) (as substituted: see note 5 supra).
- 16 Ibid r 2.72(3)(b)(viii) (as substituted: see note 5 supra).
- 17 Ibid r 2.72(3)(b)(ix) (as substituted: see note 5 supra).
- 18 Ibid r 2.72(4) (as substituted: see note 5 supra).
- 19 Ibid r 2.72(5) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

323 Proving a debt

TEXT AND NOTES--SI 1986/1925 r 2.72(3) amended, r 2.72(6) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/324. Claim established by affidavit.

324. Claim established by affidavit.

The administrator¹ may, if he thinks it necessary, require a claim of debt² to be verified by means of an affidavit in the specified form³. An affidavit may be required notwithstanding that a proof of debt⁴ has already been lodged⁵.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'debt' see para 749 post.

3 Insolvency Rules 1986, SI 1986/1925, r 2.73(1) (r 2.73, Sch 4 Form 2.29B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.29B (as so substituted).

4 For the meaning of 'debt' see para 749 post. As to proving a debt see para 323 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.73(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

324 Claim established by affidavit

TEXT AND NOTES--SI 1986/1925 r 2.73, Form 2.29B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/325. Costs of proving.

325. Costs of proving.

Unless the court¹ orders otherwise, every creditor² bears the cost of proving his own debt³, and costs incurred by the administrator⁴ in estimating the quantum of a debt⁵ are payable out of the assets as an expense of the administration⁶.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 As to references to a 'creditor' see para 318 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.74(a) (r 2.74 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'debt' see para 749 post. As to proving a debt see para 323 et seq ante. This cost includes costs incurred in providing documents or evidence under the Insolvency Rules 1986, SI 1986/1925, r 2.72(5) (as substituted) (see para 323 ante): r 2.74(a) (as so substituted).

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Ie under the Insolvency Rules 1986, SI 1986/1925, r 2.81 (as substituted) (see para 332 post): r 2.74(b) (as substituted: see note 3 supra).

6 Ibid r 2.74(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/326. Administrator to allow inspection of proofs.

326. Administrator to allow inspection of proofs.

The administrator¹ must, so long as proofs² lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day³, by any of:

- 679 (1) any creditor⁴ who has submitted a proof of debt⁵ (unless his proof has been wholly rejected for purposes of dividend or otherwise)⁶;
- 680 (2) any contributory of the company⁷; and
- 681 (3) any person acting on behalf of either of the above⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'proof' see para 323 ante.

3 For the meaning of 'business day' see para 113 note 4 ante.

4 As to references to a 'creditor' see para 318 note 5 ante.

5 For the meaning of 'debt' see para 749 post. As to proving a debt see para 323 et seq ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.75(a) (r 2.75 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.75(b) (as substituted: see note 6 supra). As to the meaning of 'company' see para 212 note 1 ante.

8 Ibid r 2.75(c) (as substituted: see note 6 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/327. New administrator appointed.

327. New administrator appointed.

If a new administrator¹ is appointed in place of another, the former administrator must transmit to him all proofs² which he has received, together with an itemised list of them³. The new administrator must sign the list by way of receipt for the proofs, and return it to his predecessor⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'proof' see para 323 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.76(1) (r 2.76 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.76(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

327 New administrator appointed

TEXT AND NOTE 4--SI 1986/1925 r 2.76(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/328. Admission and rejection of proofs for dividend.

328. Admission and rejection of proofs for dividend.

A proof¹ may be admitted for dividend either for the whole amount claimed by the creditor², or for part of that amount³. If the administrator⁴ rejects a proof in whole or in part, he must prepare a written statement of his reasons for doing so, and send it as soon as reasonably practicable to the creditor⁵.

1 For the meaning of 'proof' see para 323 ante.

2 As to references to a 'creditor' see para 318 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.77(1) (r 2.77 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.77(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/329. Appeal against decision on proof.

329. Appeal against decision on proof.

A creditor¹ who:

- 682 (1) is dissatisfied with the administrator's² decision with respect to his proof³ (including any decision on the question of preference)⁴; or
- 683 (2) is dissatisfied with the administrator's decision admitting or rejecting the whole or any part of a proof⁵,

may apply to the court⁶ for the decision to be reversed or varied⁷.

Where such an application is made, the court must fix a venue⁸ for the application to be heard, notice of which must be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and the administrator⁹. The administrator is not personally liable for costs incurred by any person in respect of an application under these provisions unless the court otherwise orders¹⁰.

1 As to references to a 'creditor' see para 318 note 5 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 For the meaning of 'proof' see para 323 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.78(1) (r 2.78 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.78(2) (as substituted: see note 4 supra).

6 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post. An application under ibid r 2.78(1) (as substituted) must be made within 21 days of his receiving the statement sent under r 2.77(2) (as substituted) (see para 328 ante) (r 2.78(1) (as substituted: see note 4 supra)), and an application under r 2.78(2) (as substituted) must be made within 21 days of the creditor becoming aware of the administrator's decision (r 2.78(2) (as so substituted)).

7 Ibid r 2.78(1), (2) (as substituted: see note 4 supra).

8 For the meaning of 'venue' see para 91 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 2.78(3) (as substituted: see note 4 supra). On receipt of the notice, the administrator must file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under r 2.77(2) (as substituted): r 2.78(4) (as so substituted). For the meaning of 'file with the court' see para 129 note 3 ante. After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the court to the administrator: r 2.78(5) (as so substituted).

10 Ibid r 2.78(6) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

329 Appeal against decision on proof

NOTE 9--SI 1986/1925 r 2.78(4A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/330. Withdrawal or variation of proof.

330. Withdrawal or variation of proof.

A creditor's¹ proof² may at any time, by agreement between himself and the administrator³, be withdrawn or varied as to the amount claimed⁴.

1 As to references to a 'creditor' see para 318 note 5 ante.

2 For the meaning of 'proof' see para 323 ante.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.79 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(B) Proof of Debts/331. Expunging of proof by the court.

331. Expunging of proof by the court.

The court¹ may expunge a proof² or reduce the amount claimed:

- 684 (1) on the administrator's³ application, where he thinks that the proof has been improperly admitted, or ought to be reduced⁴; or
- 685 (2) on the application of a creditor⁵, if the administrator declines to interfere in the matter⁶.

Where application is made to the court under these provisions, the court must fix a venue⁷ for the application to be heard, notice of which must be sent by the applicant:

- 686 (a) in the case of an application by the administrator, to the creditor who made the proof⁸; and
- 687 (b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if not himself)⁹.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meaning of 'proof' see para 323 ante.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.80(1)(a) (r 2.80 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 As to references to a 'creditor' see para 318 note 5 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.80(1)(b) (as substituted: see note 4 supra).

7 For the meaning of 'venue' see para 91 note 7 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.80(2)(a) (as substituted: see note 4 supra).

9 Ibid r 2.80(2)(b) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/332. Estimate of quantum.

(C) QUANTIFYING CLAIMS

332. Estimate of quantum.

The administrator¹ must estimate the value of any debt² which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value, and he may revise any estimate previously made, if he thinks fit, by reference to any change of circumstances or information becoming available to him³. He must inform the creditor⁴ as to his estimate and any revision of it⁵. Where the value of a debt is estimated under these provisions, the amount provable in the administration in the case of that debt is that of the estimate for the time being⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'debt' see para 749 post.

3 Insolvency Rules 1986, SI 1986/1925, r 2.81(1) (r 2.81 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 As to references to a 'creditor' see para 318 note 5 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.81(1) (as substituted: see note 3 supra).

6 Ibid r 2.81(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

332 Estimate of quantum

NOTE 3--In quantifying a claim which is contingent as at the date of the administration order, events which have occurred between that date and the date it becomes necessary to value the claim will be taken into account: *Re Federal-Mogul Aftermarket UK Ltd* [2008] EWHC 1099 (Ch), [2008] BPIR 846, sub nom *Gleave v The Board of the Pension Protection Fund* [2008] All ER (D) 287 (May) (applying *Stein v Blake* [1996] AC 243, [1995] 2 All ER 961, HL).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/333. Negotiable instruments.

333. Negotiable instruments.

Unless the administrator¹ allows, a proof² in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor³ or his authorised representative to be a true copy⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'proof' see para 323 ante.

3 As to the meaning of 'creditor' see para 318 note 5 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.82 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/334. Secured creditors.

334. Secured creditors.

If a secured creditor realises his security, he may prove¹ for the balance of his debt, after deducting the amount realised². If a secured creditor voluntarily surrenders his security for the general benefit of creditors³, he may prove for his whole debt, as if it were unsecured⁴.

1 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

2 Insolvency Rules 1986, SI 1986/1925, r 2.83(1) (r 2.83 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 As to the meaning of 'creditor' see para 318 note 5 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.83(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/335. Discounts.

335. Discounts.

There must in every case be deducted from the claim all trade and other discounts which would have been available to the company¹ but for its administration except any discount for immediate, early or cash settlement².

1 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.84 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

335 Discounts

TEXT AND NOTES--SI 1986/1925 r 2.84 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/336. Mutual credit and set-off.

336. Mutual credit and set-off.

For the purposes of determining the claims to be taken into account for the purposes of calculating a distribution (and only for those purposes), where the administrator¹, being authorised to make the distribution in question, has given notice² that he proposes to make it, an account must be taken as at the date of the notice of what is due from each party to the other in respect of the mutual dealings³, and the sums due from one party must be set off against the sums due from the other⁴.

Sums due either to or from the company are not to be taken into account under this provision if:

- 688 (1) they became due after the company entered administration⁵;
- 689 (2) the other party had notice at the time the sums became due that an application for an administration order⁶ was pending⁷ or that any person had given notice of intention to appoint an administrator⁸;
- 690 (3) the administration was immediately preceded by a winding up and the sums became due during the winding up⁹; or
- 691 (d) the administration was immediately preceded by a winding up and the other party had notice at the time the sums became due that a creditors' meeting had been summoned¹⁰ or a petition for the winding up of the company was pending¹¹.

Only the balance (if any) of the account is provable in the administration¹². Alternatively, the amount must be paid to the administrator as part of the assets¹⁷.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 I.e. pursuant to the Insolvency Rules 1986, SI 1986/1925, r 2.95 (as substituted) (see para 346 post); see r 2.85(1)(a) (rr 2.1, 2.85 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 'Mutual dealings' means mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the administration: Insolvency Rules 1986, SI 1986/1925, r 2.85(2) (as substituted: see note 2 supra). As to the meaning of 'company' see para 212 note 1 ante. As to the meaning of 'creditor' see para 318 note 5 ante. As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

4 Ibid r 2.85(1), (3) (as substituted: see note 2 supra).

5 Ibid r 2.85(4)(a) (as substituted: see note 2 supra). For the meaning of 'enters administration' see para 212 note 1 ante.

6 For the meaning of 'administration order' see para 212 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.85(4)(b)(i) (as substituted: see note 2 supra).

8 Ibid r 2.85(4)(b)(ii) (as substituted: see note 2 supra).

9 Ibid r 2.85(4)(c) (as substituted: see note 2 supra).

10 Ibid r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.85(4)(d)(i) (as substituted: see note 2 supra). As to the summoning of creditors' meetings for these purposes see the Insolvency Act 1986 s 98; and para 945 post.

11 Insolvency Rules 1986, SI 1986/1925, r 2.85(4)(d)(ii) (as substituted: see note 2 supra).

12 Ibid r 2.85(5) (as substituted: see note 2 supra).

13 Ibid r 2.85(6) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

336 Mutual credit and set-off

TEXT AND NOTES--SI 1986/1925 r 2.85 substituted: SI 2005/527.

SI 1986/1925 r 2.81 (see PARA 332) applies for the purposes of r 2.85 to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value: r 2.85(5). Rules 2.86-2.88 (see PARAS 337-339) apply for the purposes of r 2.85 in relation to any sums due to the company which (1) are payable in a currency other than sterling; (2) are of a periodical nature; or (3) bear interest: r 2.85(6). Rule 2.105 (see PARA 356) applies for the purposes of r 2.85 to any sum due to or from the company which is payable in the future: r 2.85(7). Rule 2.85 2.85 is not confined only to non-interest-bearing debts: *Re Kaupthing Singer and Friedlander Ltd (in administration)* [2009] EWHC 2308 (Ch), [2009] All ER (D) 26 (Oct) (decision reversed on appeal: [2010] EWCA Civ 518, [2010] All ER (D) 72 (May)).

TEXT AND NOTE 1--Words 'For the purposes ... (and only for those purposes)' omitted: SI 1986/1925 r 2.85(1). 'Obligation' means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise: r 2.85(9).

TEXT AND NOTES 3, 5-11--Replaced. 'Mutual dealings' means mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the administration but does not include: (1) any debt arising out of an obligation incurred after the company entered administration; (2) any debt arising out of an obligation incurred at a time when the creditor had notice that (a) an application for an administration order was pending; or (b) any person had given notice of intention to appoint an administrator; (3) any debt arising out of an obligation where (a) the administration was immediately preceded by a winding up; and (b) at the time the obligation was incurred the creditor had notice that a meeting of creditors had been summoned under the Insolvency Act 1986 s 98 or a petition for the winding up of the company was pending; (4) any debt arising out of an obligation incurred during a winding up which immediately preceded the administration; or (5) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into (a) after the company entered administration; (b) at a time when the creditor had notice that an application for an administration order was pending; (c) at a time when the creditor had notice that any person had given notice of intention to appoint an administrator; (d) where the administration was immediately preceded by a winding up, at a time when the creditor had notice that a meeting of

creditors had been summoned under s 98 or that a winding up petition was pending; or (e) during a winding up which immediately preceded the administration: SI 1986/1925 r 2.85(2).

TEXT AND NOTE 3--A sum is to be regarded as being due to or from the company for the purposes of ibid r 2.85(3) whether (1) it is payable at present or in the future; (2) the obligation by virtue of which it is payable is certain or contingent; or (3) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion: r 2.85(4).

TEXT AND NOTE 12--Ibid r 2.85(5) now r 2.85(8).

TEXT AND NOTE 13--Replaced. Alternatively the balance, if any, owed to the company must be paid to the administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance, or that part of it which results from the contingent or prospective debt, must be paid if and when that debt becomes due and payable: ibid r 2.85(8).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/337. Debt in foreign currency.

337. Debt in foreign currency.

For the purpose of proving a debt¹ incurred or payable in a currency other than sterling, the amount of the debt must be converted into sterling at the official exchange rate² prevailing on the date when the company³ entered administration⁴.

1 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

2 'The official exchange rate' is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question: Insolvency Rules 1986, SI 1986/1925, r 2.86(2) (r 2.86 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. In the absence of any such published rate, it is such rate as the court determines: Insolvency Rules 1986, SI 1986/1925, r 2.86(2) (as so substituted). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.86(1) (as substituted: see note 2 supra). For the meaning of 'enters administration' see para 212 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

337 Debt in foreign currency

TEXT AND NOTES 3, 4--If the administration was immediately preceded by a winding up, the date is that when the company went into liquidation: SI 1986/1925 r 2.86(1) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/338. Payments of a periodical nature.

338. Payments of a periodical nature.

In the case of rent and other payments of a periodical nature, the creditor¹ may prove² for any amounts due and unpaid up to the date when the company³ entered administration⁴. Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day⁵.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.87(1) (r 2.87 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'enters administration' see para 212 note 1 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.87(2) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

338 Payments of a periodical nature

TEXT AND NOTES 3, 4--If the administration was immediately preceded by a winding up, the date is that when the company went into liquidation: SI 1986/1925 r 2.87(1) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/339. Interest.

339. Interest.

Where a debt¹ proved² in the administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the company³ entered administration⁴.

In certain circumstances, the creditor's⁵ claim may include interest on the debt for periods before the company entered administration, although not previously reserved or agreed⁶. If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the company entered administration⁷. If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment⁸.

Any surplus remaining after payment of the debts proved must, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company entered administration⁹.

1 For the meaning of 'debt' see para 749 post.

2 As to proving a debt see para 323 et seq ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.88(1) (r 2.81 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'enters administration' see para 212 note 1 ante.

5 As to the meaning of 'creditor' see para 318 note 5 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.88(2) (as substituted: see note 4 supra). The rate of interest to be claimed under these provisions is the rate specified in the Judgments Act 1838 (as amended) on the date when the company entered administration: Insolvency Rules 1986, SI 1986/1925, r 2.88(6) (as so substituted).

7 Ibid r 2.88(3) (as substituted: see note 4 supra).

8 Ibid r 2.88(4) (as substituted: see note 4 supra). Interest under this provision may only be claimed for the period from the date of the demand to that of the company's entering administration and for all the purposes of the Insolvency Act 1986 and the Insolvency Rules 1986, SI 1986/1925 (as amended) must be chargeable at a rate not exceeding that referred to in note 6 supra: r 2.88(5) (as so substituted).

9 Ibid r 2.88(7) (as substituted: see note 4 supra). This is subject to r 2.105(3) (as substituted) (see para 356 post): r 2.88(7) (as so substituted). The rate of interest payable under r 2.88(7) (as substituted) is whichever is the greater of the rate specified under r 2.88(6) (as substituted) (see note 6 supra) or the rate applicable to the debt apart from the administration: r 2.88(9) (as so substituted). All interest payable under r 2.88(7) (as substituted) ranks equally whether or not the debts on which it is payable rank equally: r 2.88(8) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

339 Interest

TEXT AND NOTES 3, 4--If the administration was immediately preceded by a winding up, the reference is to any period after the date that the company went into liquidation: SI 1986/1925 r 2.88(1) (amended by SI 2005/527).

NOTE 9--SI 1986/1925 r 2.88(7) is no longer subject to r 2.105(3): r 2.88(7) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/340. Debt payable at future time.

340. Debt payable at future time.

A creditor¹ may prove for a debt² of which payment was not yet due on the date when the company³ entered administration⁴.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.89 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'enters administration' see para 212 note 1 ante. This is subject to the Insolvency Rules 1986, SI 1986/1925, r 2.105(3) (as substituted) (see para 356 post): r 2.89 (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

340 Debt payable at future time

TEXT AND NOTES 3, 4--If the administration was immediately preceded by a winding up, the date is that up to which the company went into liquidation: SI 1986/1925 r 2.89 (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/341. Value of security.

341. Value of security.

A secured creditor may, with the agreement of the administrator¹ or the leave of the court², at any time alter the value which he has, in his proof of debt³, put upon his security⁴.

However, if a secured creditor:

692 (1) being the applicant for an administration order⁵ or the appointor of the administrator, has in the application or the notice of appointment put a value on his security⁶; or

693 (2) has voted in respect of the unsecured balance of his debt⁷,

he may re-value his security only with permission of the court⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

4 Insolvency Rules 1986, SI 1986/1925, r 2.90(1) (r 2.90 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 For the meaning of 'administration order' see para 212 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.90(2)(a) (as substituted: see note 4 supra).

7 Ibid r 2.90(2)(b) (as substituted: see note 4 supra).

8 Ibid r 2.90(2) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/342. Surrender for non-disclosure.

342. Surrender for non-disclosure.

If a secured creditor omits to disclose his security in his proof of debt¹, he must surrender his security for the general benefit of creditors², unless the court³, on application⁴ by him, relieves him from the effect of this provision on the ground that the omission was inadvertent or the result of honest mistake⁵. If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just⁶.

1 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

2 As to the meaning of 'creditor' see para 318 note 5 ante.

3 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

4 As to the making of applications see para 1055 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.91(1) (r 2.91 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.91(2) (as substituted: see note 5 supra). Nothing in r 2.91 (as substituted) or rr 2.92, 2.93 (as substituted) (see paras 343-344 post) affects the rights in rem of creditors or third parties protected under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 5 (third parties' rights in rem): Insolvency Rules 1986, SI 1986/1925, r 2.91(3) (as so substituted). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/343. Redemption by administrator.

343. Redemption by administrator.

The administrator¹ may at any time give notice to a creditor² whose debt³ is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof⁴. The creditor then has 21 days (or such longer period as the administrator may allow) in which, if he so wishes, to exercise his right to revalue his security⁵. If the creditor re-values his security, the administrator may only redeem at the new value⁶.

If the administrator redeems the security, the cost of transferring it is payable out of the assets⁷. A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the administrator then has three months in which to exercise the power or determine not to exercise it⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'creditor' see para 318 note 5 ante.

3 For the meaning of 'debt' see para 749 post.

4 Insolvency Rules 1986, SI 1986/1925, r 2.92(1) (r 2.92 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'proof' see para 323 ante. As to the rights in rem of creditors or third parties see para 342 note 6 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.92(2) (as substituted: see note 4 supra). If r 2.90(2) (as substituted) (see para 341 ante) applies, the permission of the court is required: r 2.92(2) (as so substituted). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 Ibid r 2.92(2) (as substituted: see note 4 supra).

7 Ibid r 2.92(3) (as substituted: see note 4 supra).

8 Ibid r 2.92(4) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/344. Test of security's value.

344. Test of security's value.

If the administrator¹ is dissatisfied with the value which a secured creditor puts on his security (whether in his proof² or by way of re-valuation³), he may require any property comprised in the security to be offered for sale⁴. The terms of sale must be such as may be agreed, or as the court⁵ may direct; and if the sale is by auction, the administrator on behalf of the company⁶, and the creditor⁷ on his own behalf, may appear and bid⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 For the meaning of 'proof' see para 323 ante.

3 See under the Insolvency Rules 1986, SI 1986/1925, r 2.90 (as substituted) (see para 341 ante): r 2.93(1) (r 2.93 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.93(1) (as substituted: see note 3 supra). As to the rights in rem of creditors or third parties see para 342 note 6 ante.

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 As to the meaning of 'creditor' see para 318 note 5 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.93(2) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/345. Realisation of security by creditor.

345. Realisation of security by creditor.

If a creditor¹ who has valued his security subsequently realises it (whether or not at the instance of the administrator²), the net amount realised must be substituted for the value previously put by the creditor on the security³; and that amount must be treated in all respects as an amended valuation made by him⁴.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.94(a) (r 2.94 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.94(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/346. Notice of proposed distribution.

346. Notice of proposed distribution.

Where an administrator¹ is proposing to make a distribution to creditors² he must give 28 days' notice of that fact³. The notice must:

- 694 (1) be sent to all creditors whose addresses are known to the administrator⁴ and, where a member state liquidator⁵ has been appointed in relation to the company⁶, to the member state liquidator⁷;
- 695 (2) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors⁸; and
- 696 (3) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part⁹.

The administrator cannot declare a dividend unless he has by public advertisement invited creditors to prove their debts¹⁰.

A notice pursuant to either of these provisions must:

- 697 (a) state that it is the intention of the administrator to make a distribution to creditors within the period of two months from the last date for proving¹¹;
- 698 (b) specify whether the proposed dividend is interim or final¹²; and
- 699 (c) specify a date up to which proofs may be lodged¹³.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'creditor' see para 318 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.95(1) (r 2.95 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.95(2)(a)(i) (as substituted: see note 3 supra). Where a dividend is to be declared for preferential creditors, notice need be given only to those creditors in whose case the administrator has reason to believe that their debts are preferential: r 2.95(5) (as so substituted).

5 For the meaning of 'member state liquidator' see para 460 note 15 post.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.95(2)(a)(ii) (as substituted: see note 3 supra).

8 Ibid r 2.95(2)(b) (as substituted: see note 3 supra).

9 Ibid r 2.95(2)(c) (as substituted: see note 3 supra). As to the meaning of 'prescribed part' see para 109 note 11 ante. The value of the prescribed part need not be stated where the court has made an order under the Insolvency Act 1986 s 176A(5) (as added) (see para 322 ante): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.95(2)(c) (as so substituted). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

10 Ibid r 2.95(3) (as substituted: see note 3 supra). As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post. Where a dividend is to be declared for preferential creditors, public advertisement of the intended dividend need only be given if the administrator thinks fit: r 2.95(5) (as so substituted).

11 Ibid r 2.95(4)(a) (as substituted: see note 3 supra).

12 Ibid r 2.95(4)(b) (as substituted: see note 3 supra).

13 Ibid r 2.95(4)(c) (as substituted: see note 3 supra). The date must be the same date for all creditors (r 2.95(4)(c)(i) (as so substituted)) and must be not less than 21 days from that of the notice (r 2.95(4)(c)(ii) (as so substituted)).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

346 Notice of proposed distribution

TEXT AND NOTES--See SI 1986/1925 r 2.96A (postponement or cancellation of dividend) (added by SI 2010/686).

TEXT AND NOTE 10--SI 1986/1925 r 2.95(3) substituted: SI 2009/642.

NOTE 10--SI 1986/1925 r 2.95(5) substituted: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(C) Quantifying Claims/347. Admission or rejection of proofs.

347. Admission or rejection of proofs.

Within seven days of the last date for proving¹, the administrator² must, unless he has already dealt with them, either admit or reject proofs³ submitted to him⁴ or make such provision in respect of them as he thinks fit⁵. The administrator is not obliged to deal with proofs lodged after the last date for proving, but he may do so, if he thinks fit⁶.

1 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 For the meaning of 'proof' see para 323 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.96(1)(a) (r 2.96 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.96(1)(b) (as substituted: see note 4 supra).

6 Ibid r 2.96(2) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/348. Declaration of dividend.

(D) DECLARATION AND PAYMENT OF DIVIDENDS

348. Declaration of dividend.

The administrator¹ must, within the two month period provided for the notification of a proposed distribution², proceed to declare the dividend to one or more classes of creditor³ of which he gave notice⁴. Except with the permission of the court⁵, the administrator cannot declare a dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof⁶, or to expunge a proof or to reduce the amount claimed⁷.

In the declaration of a dividend, no payment may be made more than once by virtue of the same debt⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 The period referred to in the Insolvency Rules 1986, SI 1986/1925, r 2.95(4)(a) (as substituted) (see para 346 ante): r 2.97(1) (rr 2.96, 2.97 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 As to the meaning of 'creditor' see para 318 note 5 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.97(1) (as substituted: see note 2 supra).

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 For the meaning of 'proof' see para 323 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.97(2) (as substituted: see note 2 supra).

8 Ibid r 2.96(3) (as substituted: see note 2 supra). For the meaning of 'debt' see para 749 post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

348 Declaration of dividend

NOTE 7--SI 1986/1925 r 2.97(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/349. Notice of declaration of a dividend.

349. Notice of declaration of a dividend.

Where the administrator¹ declares a dividend² he must give notice of that fact to all creditors³ who have proved their debts⁴ and, where a member state liquidator⁵ has been appointed in relation to the company⁶, to the member state liquidator⁷. The notice must include the following particulars relating to the administration:

- 700 (1) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets⁸;
- 701 (2) payments made by the administrator when acting as such⁹;
- 702 (3) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part¹⁰;
- 703 (4) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes¹¹;
- 704 (5) the total amount of dividend and the rate of dividend¹²;
- 705 (6) how he proposes to distribute the dividend¹³; and
- 706 (7) whether, and if so when, any further dividend is expected to be declared¹⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the declaration of dividends see para 348 ante.

3 As to the meaning of 'creditor' see para 318 note 5 ante.

4 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

5 For the meaning of 'member state liquidator' see para 460 note 15 post.

6 As to the meaning of 'company' see para 212 note 1 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.98(1) (r 2.98 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.98(2)(a) (as substituted: see note 7 supra).

9 Ibid r 2.98(2)(b) (as substituted: see note 7 supra).

10 Ibid r 2.98(2)(c) (as substituted: see note 7 supra). As to the meaning of 'prescribed part' see para 109 note 11 ante. The value of the prescribed part need not be stated where the court has made an order under the Insolvency Act 1986 s 176A(5) (as added) (see para 322 ante): Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.98(2)(c) (as so substituted). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

11 Ibid r 2.98(2)(d) (as substituted: see note 7 supra).

12 Ibid r 2.98(2)(e) (as substituted: see note 7 supra).

13 Ibid r 2.98(2)(f) (as substituted: see note 7 supra).

14 Ibid r 2.98(2)(g) (as substituted: see note 7 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/350. Payments of dividends and related matters.

350. Payments of dividends and related matters.

The dividend may be distributed simultaneously with the notice declaring it¹. Payment of the dividend may be made by post, or arrangements may be made with any creditor² for it to be paid to him in another way, or held for his collection³. Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend must be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose⁴.

Where a creditor has proved⁵ and a member state liquidator⁶ has proved in relation to the same debt, payment may be made only to the creditor⁷.

1 Insolvency Rules 1986, SI 1986/1925, r 2.99(1) (rr 2.96, 2.99 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the notice declaring the dividend see para 349 ante.

2 As to the meaning of 'creditor' see para 318 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.99(2) (as substituted: see note 1 supra).

4 Ibid r 2.99(3) (as substituted: see note 1 supra).

5 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

6 For the meaning of 'member state liquidator' see para 460 note 15 post.

7 Insolvency Rules 1986, SI 1986/1925, r 2.96(4) (as substituted: see note 1 supra). This is subject to r 2.104 (as substituted) (see para 355 post): r 2.96(4) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/351. Notice of no dividend, or no further dividend.

351. Notice of no dividend, or no further dividend.

If the administrator¹ gives notice to creditors² that he is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either that no funds have been realised³ or that the funds realised have already been distributed or used or allocated for defraying the expenses of administration⁴.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'creditor' see para 318 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.100(a) (r 2.100 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the notice declaring the dividend see para 349 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.100(b) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/352. Proof altered after payment of dividend.

352. Proof altered after payment of dividend.

If after payment of dividend the amount claimed by a creditor¹ in his proof² is increased, the creditor is not entitled to disturb the distribution of the dividend, although he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive³. Any dividend or dividends payable under these provisions must be paid before the money mentioned above is applied to the payment of any such further dividend⁴. If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the administrator⁵ any amount overpaid by way of dividend⁶.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 For the meaning of 'proof' see para 323 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.101(1) (r 2.101 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.101(2) (as substituted: see note 3 supra).

5 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.101(3) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/353. Secured creditors.

353. Secured creditors.

Where a creditor¹ re-values his security at a time when a dividend has been declared², then:

- 707 (1) if the revaluation results in a reduction of his unsecured claim ranking for dividend, he must forthwith repay to the administrator³, for the credit of the administration, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security⁴; and
- 708 (2) if the revaluation results in an increase of his unsecured claim, he is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security⁵.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 As to the declaration of dividends see para 348 et seq ante.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.102(1), (2) (r 2.102 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.102(3) (as substituted: see note 4 supra). The creditor is not, however, entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation: r 2.102(3) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/354. Disqualification from dividend.

354. Disqualification from dividend.

If a creditor¹ contravenes any provision of the Insolvency Act 1986 or the Insolvency Rules 1986 relating to the valuation of securities, the court² may, on the application of the administrator³, order that the creditor be wholly or partly disqualified from participation in any dividend⁴.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.103 (substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/355. Assignment of right to dividend.

355. Assignment of right to dividend.

If a person entitled to a dividend gives notice to the administrator¹ that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the administrator must pay the dividend to that other person accordingly².

¹ For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

² Insolvency Rules 1986, SI 1986/1925, r 2.104(1) (r 2.104 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. A notice given under this provision must specify the name and address of the person to whom payment is to be made: r 2.104(2) (as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/B. DISTRIBUTIONS TO CREDITORS/(D) Declaration and Payment of Dividends/356. Debt payable at future time.

356. Debt payable at future time.

Where a creditor¹ has proved for a debt² of which payment is not due at the date of the declaration of dividend, he is entitled to dividend equally with other creditors³. This is subject to the proviso that for the purpose of dividend (and no other purpose), the amount of the creditor's admitted proof⁴ (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof) must be reduced by a specified percentage⁵. Other creditors are not entitled to interest out of surplus funds⁶ until any creditor to whom these provisions apply has been paid the full amount of his debt⁷.

1 As to the meaning of 'creditor' see para 318 note 5 ante.

2 As to proving a debt see para 323 et seq ante. For the meaning of 'debt' see para 749 post.

3 Insolvency Rules 1986, SI 1986/1925, r 2.105(1) (r 2.105 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 For the meaning of 'proof' see para 323 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.105(2) (as substituted: see note 3 supra). The percentage is calculated as follows:

$$\frac{I \times M}{12}$$

where I is 5% and M is the number of months (expressed, if need be, as or as including, fractions of months) between the declaration of dividend and the date when payment of the creditor's debt would otherwise be due: see r 2.105(2) (as so substituted).

6 *Ibid* under *ibid* r 2.88 (as substituted) (see para 339 ante): see r 2.105(3) (as so substituted).

7 *Ibid* r 2.105(3) (as substituted: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

356 Debt payable at future time

TEXT AND NOTE 5--For 'a specified percentage' read 'by applying the following formula'; the formula is now $X/1.05^n$ where 'X' is the value of the admitted proof, and 'n' is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months

in a decimalised form: SI 1986/1925 r 2.105(2) (substituted by SI 2005/527)). 'Relevant date' means, in the case of an administration which was not immediately preceded by a winding up, the date that the company entered administration and, in the case of an administration which was immediately preceded by a winding up, the date that the company went into liquidation: SI 1986/1925 r 2.105(3) (added by SI 2005/527).

TEXT AND NOTES 6, 7--Revoked: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/C. DISPOSAL OF PROPERTY/357. Disposal of property subject to floating charge.

C. DISPOSAL OF PROPERTY

357. Disposal of property subject to floating charge.

The administrator¹ of a company² may dispose of or take action³ relating to property⁴ which is subject to a floating charge⁵ as if it were not subject to the charge⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 In the Insolvency Act 1986 Sch B1 (as added), a reference to 'action' includes a reference to inaction: s 8, Sch B1 para 111(3) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 As to the meaning of 'property' see para 489 note 8 post.

5 For the meaning of 'floating charge' see para 212 note 3 ante.

6 Insolvency Act 1986 Sch B1 para 70(1) (as added: see note 3 supra). Where property is disposed of in reliance on Sch B1 para 70(1) (as added), the holder of the floating charge will have the same priority in respect of acquired property (ie property of the company which directly or indirectly represents the property disposed of) as he had in respect of the property disposed of: Sch B1 para 70(2), (3) (as so added).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/C. DISPOSAL OF PROPERTY/358. Disposal of property not subject to floating charge.

358. Disposal of property not subject to floating charge.

The court¹ may by order enable the administrator² of a company³ to dispose of property⁴ which is subject to a security⁵ (other than a floating charge⁶) as if it were not subject to the security⁷. Such an order may be made only on the application of the administrator⁸ and where the court thinks that disposal of the property would be likely to promote the purpose of administration⁹ in respect of the company¹⁰. Where an administrator applies for an order, the court must fix a venue¹¹ for the hearing of the application and the administrator must as soon as reasonably practicable give notice of the venue to the person who is the holder of the security¹².

Such an order is subject to the condition that there be applied towards discharging the sums secured by the security the net proceeds of disposal of the property¹³ and any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value¹⁴. If such an order relates to more than one security, application of money under these provisions must be in the order of the priorities of the securities¹⁵.

If an order is made, the court must send two sealed copies to the administrator¹⁶.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 As to the meaning of 'property' see para 489 note 8 post.

5 For the meaning of 'security' see para 109 note 10 ante.

6 For the meaning of 'floating charge' see para 212 note 3 ante.

7 Insolvency Act 1986 s 8, Sch B1 para 71(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

8 Insolvency Act 1986 Sch B1 para 71(2)(a) (as added: see note 7 supra). As to the making of applications see para 1055 et seq post.

9 For the meaning of 'the purpose of administration' see para 214 ante.

10 Insolvency Act 1986 Sch B1 para 71(2)(b) (as added: see note 7 supra).

11 For the meaning of 'venue' see para 91 note 7 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.66(1), (2) (r 2.66, Sch 4 Form 2.28B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

13 Insolvency Act 1986 Sch B1 para 71(3)(a) (as added: see note 7 supra).

14 Ibid Sch B1 para 71(3)(b) (as added: see note 7 supra). 'Market value' means the amount which would be realised on a sale of property in the open market by a willing vendor: Sch B1 para 111(1) (as so added).

15 Ibid Sch B1 para 71(4) (as added: see note 7 supra).

16 Insolvency Rules 1986, SI 1986/1925, r 2.66(3) (as substituted: see note 12 supra). The administrator must send one of the copies to the person who is the holder of the security (r 2.66(4) (as so substituted)) and one to the registrar of companies before the end of the period of 14 days starting with the date of the order (Insolvency Act 1986 Sch B1 para 71(5) (as added: see note 7 supra); Insolvency Rules 1986, SI 1986/1925, r 2.66(5) (as so substituted)). As to the amendment of provisions concerning time-periods see para 228 note 4 ante. As to the form of the copy to be sent to the registrar of companies see Sch 4 Form 2.28B (as so substituted). An administrator commits an offence if he fails without reasonable excuse to send a copy of the order to the registrar of companies: Insolvency Act 1986 Sch B1 para 71(6) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 7 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

358 Disposal of property not subject to floating charge

NOTES 12, 16--SI 1986/1925 r 2.66(5) substituted, Sch 4 Form 2.28B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(v) Powers and Functions of Administrator/C. DISPOSAL OF PROPERTY/359. Disposal of hire-purchase property.

359. Disposal of hire-purchase property.

The court¹ may by order enable the administrator² of a company³ to dispose of goods which are in the possession of the company under a hire-purchase agreement⁴ as if all the rights of the owner under the agreement were vested in the company⁵. Such an order may be made only on the application of the administrator⁶ and where the court thinks that disposal of the goods would be likely to promote the purpose of administration⁷ in respect of the company⁸. Where an administrator applies for an order, the court must fix a venue⁹ for the hearing of the application and the administrator must as soon as reasonably practicable give notice of the venue to the person who is the holder of the security¹⁰.

Such an order is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement the net proceeds of disposal of the goods¹¹ and any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods at market value¹².

If an order is made, the court must send two sealed copies to the administrator¹³.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 As to the meaning of 'hire-purchase agreement' see para 224 note 12 ante.

5 Insolvency Act 1986 s 8, Sch B1 para 72(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

6 Insolvency Act 1986 Sch B1 para 72(2)(a) (as added: see note 5 supra). As to the making of applications see para 1055 et seq post.

7 For the meaning of 'the purpose of administration' see para 214 ante.

8 Insolvency Act 1986 Sch B1 para 72(2)(b) (as added: see note 5 supra).

9 For the meaning of 'venue' see para 91 note 7 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.66(1), (2) (r 2.66, Sch 4 Form 2.28B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

11 Insolvency Act 1986 Sch B1 para 72(3)(a) (as added: see note 5 supra).

12 Ibid Sch B1 para 72(3)(b) (as added: see note 5 supra). For the meaning of 'market value' see para 358 note 14 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 2.66(3) (as substituted: see note 10 supra). The administrator must send one of the copies to the person who is the holder of the security (r 2.66(4) (as so substituted)) and one to the registrar of companies before the end of the period of 14 days starting with the date of the order (Insolvency Act 1986 Sch B1 para 72(4) (as added: see note 5 supra); Insolvency Rules 1986, SI 1986/1925, r 2.66(5) (as so substituted)). As to the amendment of provisions concerning time-periods see para 228 note 4 ante. As to the form of the copy to be sent to the registrar of companies see Sch 4 Form 2.28B (as so substituted). An administrator commits an offence if he fails without reasonable excuse to send a copy of the order to the registrar of companies: Insolvency Act 1986 Sch B1 para 72(5) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 5 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

359 Disposal of hire-purchase property

NOTES 10, 13--SI 1986/1925 Sch 4 Form 2.28B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/ (vi) Protection of Interests of Creditors and Members/360. Protection for secured or preferential creditor.

(vi) Protection of Interests of Creditors and Members

360. Protection for secured or preferential creditor.

An administrator's statement of proposals¹ may not include any action² which:

- 709 (1) affects the right of a secured creditor of the company³ to enforce his security⁴;
- 710 (2) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts⁵; or
- 711 (3) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another⁶.

This does not however apply to:

- 712 (a) action to which the relevant creditor consents⁷;
- 713 (b) a proposal for a voluntary arrangement⁸; or
- 714 (c) a proposal for a compromise or arrangement⁹.

1 le under the Insolvency Act 1986 Sch B1 para 49 (as added) (see para 273 ante). The reference in the text to the statement of proposals includes a reference to the statement as revised or modified: Insolvency Act 1986 s 8, Sch B1 para 73(3) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

2 As to the meaning of 'action' see para 357 note 3 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 Sch B1 para 73(1)(a) (as added: see note 1 supra). For the meaning of 'security' see para 109 note 10 ante.

5 Ibid Sch B1 para 73(1)(b) (as added: see note 1 supra).

6 Ibid Sch B1 para 73(1)(c) (as added: see note 1 supra).

7 Ibid Sch B1 para 73(2)(a) (as added: see note 1 supra).

8 Ibid Sch B1 para 73(2)(b) (as added: see note 1 supra). The reference in the text to a voluntary arrangement is to a voluntary arrangement under Pt I (ss 1-7B) (as amended) (see para 71 et seq ante): Sch B1 para 73(2)(b) (as so added). This provision is without prejudice to s 4(3) (see para 123 ante): Sch B1 para 73(2) (b) (as so added).

9 Ibid Sch B1 para 73(2)(c) (as added: see note 1 supra). The reference in the text to a compromise or arrangement is a reference to a compromise or arrangement to be sanctioned under the Companies Act 1985 s 425 (as amended) (compromise with creditors or members: see COMPANIES vol 15 (2009) PARA 1425 et seq): Insolvency Act 1986 Sch B1 para 73(2)(c) (as so added).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

360 Protection for secured or preferential creditor

TEXT AND NOTES 7-9--Add head (d) a proposal for a cross-border merger within the meaning of the Companies (Cross-Border Mergers) Regulations 2007, SI 2007/2974, reg 2: 1986 Act Sch B1 para 73(2)(d) (added by SI 2007/2974).

TEXT AND NOTE 8--1986 Act Sch B1 para 73(2)(b) amended: SI 2007/2974.

NOTE 9--1986 Act Sch B1 para 73(2)(c) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/ (vi) Protection of Interests of Creditors and Members/361. Challenge to administrator's conduct of company.

361. Challenge to administrator's conduct of company.

A creditor or member¹ of a company² in administration³ may apply to the court⁴ claiming that the administrator⁵:

- 715 (1) is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors)⁶;
- 716 (2) proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors)⁷; or
- 717 (3) is not performing his functions as quickly or as efficiently as is reasonably practicable⁸.

On such an application the court may:

- 718 (a) grant relief⁹;
- 719 (b) dismiss the application¹⁰;
- 720 (c) adjourn the hearing conditionally or unconditionally¹¹;
- 721 (d) make an interim order¹²; or
- 722 (e) make any other order it thinks appropriate¹³.

In particular, such an order may:

- 723 (i) regulate the administrator's exercise of his functions¹⁴;
- 724 (ii) require the administrator to do or not do a specified thing¹⁵;
- 725 (iii) require a creditors' meeting¹⁶ to be held for a specified purpose¹⁷;
- 726 (iv) provide for the appointment of an administrator to cease to have effect¹⁸;
- 727 (v) make consequential provision¹⁹.

An order may be made on a claim under these provisions whether or not the action²⁰ complained of is within the administrator's powers²¹ or was taken in reliance on an order relating to the disposal of property subject to a security (other than a floating charge)²² or to the disposal of hire-purchase property²³. An order may not be made under these provisions if it would impede or prevent the implementation of a voluntary arrangement²⁴, a compromise or arrangement²⁵ or proposals or a revision approved²⁶ more than 28 days before the day on which the application for the order under this provision is made²⁷.

1 As to the meaning of 'member' see para 72 note 9 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 For the meaning of 'in administration' see para 214 note 4 ante.

4 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

5 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

6 Insolvency Act 1986 s 8, Sch B1 para 74(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

7 Insolvency Act 1986 Sch B1 para 74(1)(b) (as added: see note 6 supra).

8 Ibid Sch B1 para 74(2) (as added: see note 6 supra).

9 Ibid Sch B1 para 74(3)(a) (as added: see note 6 supra).

10 Ibid Sch B1 para 74(3)(b) (as added: see note 6 supra).

11 Ibid Sch B1 para 74(3)(c) (as added: see note 6 supra).

12 Ibid Sch B1 para 74(3)(d) (as added: see note 6 supra).

13 Ibid Sch B1 para 74(3)(e) (as added: see note 6 supra).

14 Ibid Sch B1 para 74(4)(a) (as added: see note 6 supra).

15 Ibid Sch B1 para 74(4)(b) (as added: see note 6 supra).

16 For the meaning of 'creditors' meeting' see para 275 ante.

17 Insolvency Act 1986 Sch B1 para 74(4)(c) (as added: see note 6 supra).

18 Ibid Sch B1 para 74(4)(d) (as added: see note 6 supra).

19 Ibid Sch B1 para 74(4)(e) (as added: see note 6 supra).

20 As to the meaning of 'action' see para 357 note 3 ante.

21 Ie under the Insolvency Act 1986 Sch B1 (as added): Sch B1 para 74(5)(a) (as added: see note 6 supra).

22 Ie an order under ibid Sch B1 para 71 (as added) (see para 358 ante): Sch B1 para 74(5)(b) (as added: see note 6 supra).

23 Ibid Sch B1 para 74(5) (as added: see note 6 supra). The reference in the text to an order relating to the disposal of hire-purchase property is a reference to an order under Sch B1 para 72 (as added) (see para 359 ante): Sch B1 para 74(5)(b) (as so added).

24 Ibid Sch B1 para 74(6)(a) (as added: see note 6 supra). The reference in the text to a voluntary arrangement is to a voluntary arrangement under Pt I (ss 1-7B) (as amended) (see para 71 et seq ante): Sch B1 para 74(6)(a) (as so added).

25 Ibid Sch B1 para 74(6)(b) (as added: see note 6 supra). The reference in the text to a compromise or arrangement is a reference to a compromise or arrangement to be sanctioned under the Companies Act 1985 s 425 (as amended) (compromise with creditors or members: see COMPANIES vol 15 (2009) PARA 1425 et seq): Insolvency Act 1986 Sch B1 para 74(6)(b) (as so added).

26 Ie approved under ibid Sch B1 para 53 (as added) or Sch B1 para 54 (as added) (see paras 290, 292 ante): Sch B1 para 74(6)(c) (as added: see note 6 supra).

27 Ibid Sch B1 para 74(6)(c) (as added: see note 6 supra). As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

361 Challenge to administrator's conduct of company

NOTE 6--See *Four Private Investment Funds v Lomas* [2008] EWHC 2869 (Ch), [2009] 1 BCLC 161 (unwillingness to devote more resources to answering questions put by a particular group of creditors could not be said to be unfair).

TEXT AND NOTES 24-27--Or if it would impede or prevent a cross-border merger within the meaning of the Companies (Cross-Border Mergers) Regulations 2007, SI 2007/2974, reg 2: 1986 Act Sch B1 para 74(6)(ba) (added by SI 2007/2974).

NOTE 25--1986 Act Sch B1 para 74(6)(b) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/ (vi) Protection of Interests of Creditors and Members/362. Misfeasance.

362. Misfeasance.

The court¹ may examine the conduct of a person who is or purports to be the administrator² of a company³, or has been or has purported to be the administrator of a company⁴. Such an examination may be held only on the application⁵ of:

- 728 (1) the official receiver⁶;
- 729 (2) the administrator of the company⁷;
- 730 (3) the liquidator of the company⁸;
- 731 (4) a creditor of the company⁹; or
- 732 (5) a contributory of the company¹⁰,

and must allege that the administrator:

- 733 (a) has misapplied or retained money or other property of the company¹¹;
- 734 (b) has become accountable for money or other property of the company¹²;
- 735 (c) has breached a fiduciary or other duty in relation to the company¹³; or
- 736 (d) has been guilty of misfeasance¹⁴.

On an examination into a person's conduct the court may order him:

- 737 (i) to repay, restore or account for money or property¹⁵;
- 738 (ii) to pay interest¹⁶; or
- 739 (iii) to contribute a sum to the company's property¹⁷ by way of compensation for breach of duty or misfeasance¹⁸.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante. For the purposes of the Insolvency Act 1986 Sch B1 para 75(3) (see the text and notes 11-14 infra), 'administrator' includes a person who purports or has purported to be a company's administrator: s 8, Sch B1 para 75(5) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

3 Insolvency Act 1986 Sch B1 para 75(1)(a) (as added: see note 2 supra). As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 Sch B1 para 75(1)(b) (as added: see note 2 supra).

5 As to the making of applications see para 1055 et seq post. An application under Sch B1 para 75(2) (as added) may be made in respect of an administrator who has been discharged under Sch B1 para 98 (as added) (see para 250 ante) only with the permission of the court: Sch B1 para 75(6) (as added: see note 2 supra).

6 Insolvency Act 1986 Sch B1 para 75(2)(a) (as added: see note 2 supra).

7 Ibid Sch B1 para 75(2)(b) (as added: see note 2 supra).

8 Ibid Sch B1 para 75(2)(c) (as added: see note 2 supra).

- 9 Ibid Sch B1 para 75(2)(d) (as added: see note 2 supra).
- 10 Ibid Sch B1 para 75(2)(e) (as added: see note 2 supra).
- 11 Ibid Sch B1 para 75(3)(a) (as added: see note 2 supra).
- 12 Ibid Sch B1 para 75(3)(b) (as added: see note 2 supra).
- 13 Ibid Sch B1 para 75(3)(c) (as added: see note 2 supra).
- 14 Ibid Sch B1 para 75(3)(d) (as added: see note 2 supra).
- 15 Ibid Sch B1 para 75(4)(a) (as added: see note 2 supra).
- 16 Ibid Sch B1 para 75(4)(b) (as added: see note 2 supra).
- 17 As to the meaning of 'property' see para 489 note 8 post.
- 18 Insolvency Act 1986 Sch B1 para 75(4)(c) (as added: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/A. ADMINISTRATION ENDING AUTOMATICALLY/363. Automatic end of administration.

(vii) Ending Administration

A. ADMINISTRATION ENDING AUTOMATICALLY

363. Automatic end of administration.

The appointment of an administrator¹ ceases to have effect at the end of the period of one year beginning with the date on which it takes effect², and a company³ ceases to be in administration at the same time⁴. However, an administrator's term of office may be extended either by order of the court⁵ (on the administrator's application⁶, and for a specified period)⁷ or by consent (for a specified period not exceeding six months)⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 Insolvency Act 1986 s 8, Sch B1 para 76(1) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (2), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. In relation to insurers, the period is 30 months beginning with the date on which the appointment of the administrator takes effect: Insolvency Act 1986 Sch B1 para 76(1) (Sch B1 para 76 as so added; and amended by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule paras 4, 5). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 Sch B1 para 2(c) (as added: see note 2 supra). A company does not, however, cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office: Sch B1 para 2(d) (as so added). As to resignation and removal see para 244 et seq ante.

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 As to the making of applications see para 1055 et seq post.

7 Insolvency Act 1986 Sch B1 para 76(2)(a) (as added: see note 2 supra). As to extension by court order see further para 373 post.

8 Ibid Sch B1 para 76(2)(b) (as added: see note 2 supra). As to extension by consent see further para 374 post. In relation to insurers, the period is 12 months beginning with the date on which the appointment of the administrator takes effect: Sch B1 para 76(2)(b) (as so added; and amended (see note 2 supra)).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/A. ADMINISTRATION ENDING AUTOMATICALLY/364. Notice of automatic end of administration.

364. Notice of automatic end of administration.

Where the appointment of an administrator¹ has ceased to have effect², and the administrator is not required by any other provision³ to give notice of that fact, he must, as soon as reasonably practicable, and in any event within five business days⁴ of the date when the appointment has ceased, file a notice of automatic end of administration in the specified form⁵ with the court⁶. The notice must be accompanied by a final progress report⁷. A copy of the notice and accompanying document must be sent as soon as reasonably practicable to the registrar of companies, and to all persons who received a copy of the administrator's proposals⁸. If the administrator makes default in complying with this provision, he is liable to a fine and, for continued contravention, to a daily default fine⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 See para 363 ante.

3 Ie by any other of the Insolvency Rules 1986, SI 1986/1925 (as amended): see r 2.111(1) (rr 2.110, 2.111, Form 2.30B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

4 For the meaning of 'business day' see para 113 note 4 ante.

5 As to the form see the Insolvency Rules 1986, SI 1986/1925, r 2.111(1), Sch 4 Form 2.30B (as substituted: see note 3 supra).

6 Ibid r 2.111(1) (as substituted: see note 3 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. For the meaning of 'file with the court' see para 129 note 3 ante.

7 Ibid r 2.111(1) (as substituted: see note 3 supra). For the purposes of Ch 12 (rr 2.110-2.118) (as substituted), a reference to a progress report is a reference to a report in the form specified in r 2.47 (see para 311 ante): r 2.110(1) (as substituted: see note 3 supra). 'The final progress report' means a progress report which includes a summary of the administrator's proposals, any major amendments to, or deviations from, those proposals, the steps taken during the administration, and the outcome: r 2.110(2) (as so substituted).

8 Ibid r 2.111(2) (as substituted: see note 3 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

9 Ibid r 2.111(3) (as substituted: see note 3 supra). As to daily default fines see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/B. ADMINISTRATION ENDING ON APPLICATION OF ADMINISTRATOR/365. Court application by administrator to end administration.

B. ADMINISTRATION ENDING ON APPLICATION OF ADMINISTRATOR

365. Court application by administrator to end administration.

On the application¹ of the administrator² of a company³, the court⁴ may provide for the appointment of an administrator of the company to cease to have effect from a specified time⁵. The administrator must make such an application if:

- 740 (1) he thinks the purpose of administration⁶ cannot be achieved in relation to the company⁷;
- 741 (2) he thinks the company should not have entered administration⁸;
- 742 (3) a creditors' meeting⁹ requires him to make such an application¹⁰; or
- 743 (4) the administration is pursuant to an administration order¹¹ and the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company¹².

On an application under these provisions the court may:

- 744 (a) adjourn the hearing conditionally or unconditionally¹³;
- 745 (b) dismiss the application¹⁴;
- 746 (c) make an interim order¹⁵; or
- 747 (d) make any order it thinks appropriate (whether in addition to, in consequence of, or instead of the order applied for)¹⁶.

1 As to the making of applications see para 1055 et seq post.

2 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

5 Insolvency Act 1986 s 8, Sch B1 para 79(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. In relation to insurers, applications under this provision may also be made by the Financial Services Authority: Insolvency Act 1986 Sch B1 para 79(1) (as so added; and amended by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3, Schedule para 6). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

Where the court makes an order to end the administration, the administrator must notify the registrar of companies in the specified form, attaching a copy of the court order and a copy of his final progress report: Insolvency Rules 1986, SI 1986/1925, r 2.116 (r 2.116, Sch 4 Form 2.33B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, r 2.116, Sch 4

Form 2.33B (as so substituted). For the meaning of 'final progress report' see para 364 note 7 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect, the administrator must send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order: Insolvency Act 1986 Sch B1 para 86(1), (2) (as so added). Failure to comply with this requirement is an offence punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as so amended). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect and the administrator was appointed by administration order, the court must discharge the administration order: Sch B1 para 85 (as so added). For the meaning of 'administration order' see para 212 ante.

6 For the meaning of 'the purpose of administration' see para 214 ante.

7 Insolvency Act 1986 Sch B1 para 79(2)(a) (as added: see note 5 supra).

8 Ibid Sch B1 para 79(2)(b) (as added: see note 5 supra). For the meaning of 'enters administration' see para 212 note 1 ante.

9 For the meaning of 'creditors' meeting' see para 275 ante.

10 Insolvency Act 1986 Sch B1 para 79(2)(c) (as added: see note 5 supra).

11 Ibid Sch B1 para 79(3)(a) (as added: see note 5 supra).

12 Ibid Sch B1 para 79(3)(b) (as added: see note 5 supra).

13 Ibid Sch B1 para 79(4)(a) (as added: see note 5 supra).

14 Ibid Sch B1 para 79(4)(b) (as added: see note 5 supra).

15 Ibid Sch B1 para 79(4)(c) (as added: see note 5 supra).

16 Ibid Sch B1 para 79(4)(d) (as added: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

365 Court application by administrator to end administration

NOTE 5--SI 1986/1925 Sch 4 Form 2.33B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/B. ADMINISTRATION ENDING ON APPLICATION OF ADMINISTRATOR/366. Application to court by administrator.

366. Application to court by administrator.

An application to court¹ for an order ending an administration² must have attached to it a progress report³ for the period since the last progress report (if any) or the date the company⁴ entered administration⁵ and a statement indicating what the administrator thinks should be the next steps for the company (if applicable)⁶. Where the administrator⁷ applies to the court because the creditors' meeting⁸ has required him to, he must also attach a statement to the application in which he must indicate (giving reasons) whether or not he agrees with the creditors' requirement to him to make the application⁹.

When the administrator applies other than at the request of a creditors' meeting, he must:

- 748 (1) give notice in writing to the applicant for the administration order¹⁰ under which he was appointed, or the person by whom he was appointed and the creditors of his intention to apply to court at least seven days before the date that he intends to make his application¹¹; and
- 749 (2) attach to his application to court a statement that he has notified the creditors, and copies of any response from creditors to that notification¹².

Where the administrator applies to court for an order ending an administration¹³ in conjunction with a petition for an order to wind up the company¹⁴, he must, in addition to these requirements, notify the creditors whether he intends to seek appointment as liquidator¹⁵.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

2 Ie under the Insolvency Act 1986 Sch B1 para 79 (as added) (see para 365 ante): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.114(1) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.33, 2.114 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 For the meaning of 'progress report' see para 364 note 7 ante.

4 As to the meaning of 'company' see para 212 note 1 ante.

5 For the meaning of 'enters administration' see para 212 note 1 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.114(1) (as substituted: see note 2 supra).

7 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

8 For the meaning of 'creditors' meeting' see para 275 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 2.114(2) (as substituted: see note 2 supra).

10 For the meaning of 'administration order' see para 212 ante.

11 Insolvency Rules 1986, SI 1986/1925, r 2.114(3)(a) (as substituted: see note 2 supra). Where the administrator intends to apply to the court for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with the Insolvency Act 1986 Sch B1 para 49 (as added)

(see para 273 ante) he must, at least 10 days before he makes the application, send to all creditors of the company (so far as he is aware of their addresses) a report containing the information required by the Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(a)-(p) (as substituted) (see para 273 ante): r 2.33(6) (as substituted: see note 2 supra).

12 Ibid r 2.114(3)(b) (as substituted: see note 2 supra).

13 Ie under the Insolvency Act 1986 Sch B1 para 79 (as added) (see para 365 ante).

14 Ie under s 124 (as amended) (see para 450 et seq post).

15 Insolvency Rules 1986, SI 1986/1925, r 2.114(4) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/C. ADMINISTRATION ENDING ON SUCCESSFUL COMPLETION OF OBJECTIVE/367. Termination of administration where objective achieved.

C. ADMINISTRATION ENDING ON SUCCESSFUL COMPLETION OF OBJECTIVE

367. Termination of administration where objective achieved.

If an administrator¹ appointed by the holder of a floating charge² or by the company³ or directors⁴ thinks that the purpose of administration⁵ has been sufficiently achieved in relation to the company he may file a notice in the prescribed form⁶ with the court⁷ and with the registrar of companies⁸. The notice must be accompanied by a final progress report⁹.

The administrator's appointment ceases to have effect from the date and time endorsed by the court¹⁰. The administrator must, as soon as reasonably practicable, and within five business days¹¹, send a copy of the notice of end of administration (and the accompanying report) to every creditor of the company of whose claim and address he is aware, to all those persons who were notified of his appointment, and to the company¹². The notice must:

- 750 (1) state the full name of the company¹³;
- 751 (2) state the name and address of the administrator¹⁴;
- 752 (3) state the date that the administration ended¹⁵; and
- 753 (4) specify an address to which the creditors can write for a copy of the notice of end of administration¹⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 Ie under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante). For the meanings of 'floating charge' and 'holder of a floating charge' see para 212 note 3 ante.

3 As to the meaning of 'company' see para 212 note 1 ante.

4 Ie under the Insolvency Act 1986 Sch B1 para 22 (as added) (see para 236 et seq ante).

5 For the meaning of 'the purpose of administration' see para 214 ante.

6 As to the form see the Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.113(1), Sch 4 Form 2.32B (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.33, 2.113, 2.116, Sch 4 Forms 2.32B, 2.33B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

7 Insolvency Act 1986 s 8, Sch B1 para 80(1), (2)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. For the meaning of 'file with the court' see para 129 note 3 ante. Two copies of the notice must be filed with the court and must contain a statement that a copy of the notice has been sent to the registrar of companies (see the text and note 8 supra): Insolvency Rules 1986, SI 1986/1925, r 2.113(3) (as substituted: see note 6 supra). The court must endorse each copy with the date and time of filing: r 2.113(3) (as so substituted). The court must give a sealed copy of the notice to the administrator: r 2.113(4) (as so substituted). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

8 Insolvency Act 1986 Sch B1 para 80(2)(b) (as added: see note 7 supra); Insolvency Rules 1986, SI 1986/1925, r 2.113(2) (as substituted: see note 6 supra). Where the administrator intends to file a notice under this provision for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with the Insolvency Act 1986 Sch B1 para 49 (as added) (see para 273 ante), he must, at least 10 days before he files such a notice, send to all creditors of the company (so far as he is aware of their addresses) a report containing the information required by the Insolvency Rules 1986, SI 1986/1925, r 2.33(2) (a)-(p) (as substituted) (see para 273 ante): r 2.33(6) (as so substituted).

9 Ibid 2.113(1) (as substituted: see note 6 supra). For the meaning of 'final progress report' see para 364 note 7 ante.

10 Insolvency Act 1986 Sch B1 para 80(3) (as added: see note 7 supra); Insolvency Rules 1986, SI 1986/1925, r 2.113(3) (as substituted: see note 6 supra). See note 7 supra. Where the court makes an order to end the administration, the administrator must notify the registrar of companies in the specified form, attaching a copy of the court order and a copy of his final progress report: r 2.116 (as so substituted). As to the form of the notice see Sch 4 Form 2.33B (as so substituted). Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect, the administrator must send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order: Insolvency Act 1986 Sch B1 para 86(1), (2) (as so added). Failure to comply with this requirement is an offence punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 7 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect and the administrator was appointed by administration order, the court must discharge the administration order: Sch B1 para 85 (as so added). For the meaning of 'administration order' see para 212 ante.

11 For the meaning of 'business day' see para 113 note 4 ante.

12 Insolvency Act 1986 Sch B1 para 80(4) (as added: see note 7 supra); Insolvency Rules 1986, SI 1986/1925, r 2.113(5) (as substituted: see note 6 supra). See note 7 supra. An administrator who fails without reasonable excuse to comply with these requirements commits an offence: Insolvency Act 1986 Sch B1 para 80(6) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 7 supra). The administrator will be taken to have complied with these requirements, however, if, within five business days of filing the notice of end of administration with the court, he publishes once in the same newspaper as he published his notice of appointment, and in the Gazette, a notice undertaking to provide a copy of the notice of end of administration to any creditor of the company: Sch B1 para 80(5) (as so added); Insolvency Rules 1986, SI 1986/1925, r 2.113(6) (as so substituted). As to the Gazette, and the gazetting of notices, see para 1048 post.

13 Ibid r 2.113(6)(a) (as substituted: see note 6 supra).

14 Ibid r 2.113(6)(b) (as substituted: see note 6 supra).

15 Ibid r 2.113(6)(c) (as substituted: see note 6 supra).

16 Ibid r 2.113(6)(d) (as substituted: see note 6 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

367 Termination of administration where objective achieved

NOTES 6, 10--SI 1986/1925 Sch 4 Form 2.33B revoked: SI 2010/686.

NOTES 12-16--SI 1986/1925 r 2.113(6) now r 2.113(6), (6A) (substituted by SI 2009/642). See SI 1986/1925 r 2.113(7) (added by SI 2009/642).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/D. ADMINISTRATION ENDING ON APPLICATION OF CREDITOR/368. Creditor's application to end administration.

D. ADMINISTRATION ENDING ON APPLICATION OF CREDITOR

368. Creditor's application to end administration.

A creditor of a company¹ may apply to the court² for the appointment of an administrator³ of the company to cease to have effect at a specified time⁴. The application must allege an improper motive on the part of either the applicant for the original administration order (in the case of an administrator appointed by administration order)⁵ or the person who appointed the administrator (in any other case)⁶. A copy of the creditor's application must be served⁷ on the administrator and on the person who either made the application for the administration order or made the appointment⁸.

The administrator, applicant or appointor, or holder of the floating charge by virtue of which the appointment was made, may appear at the hearing of the application⁹. The court may:

- 754 (1) provide for the administrator's appointment to cease to have effect as applied for¹⁰;
- 755 (2) adjourn the hearing conditionally or unconditionally¹¹;
- 756 (3) dismiss the application¹²;
- 757 (4) make an interim order¹³; or
- 758 (5) make any order it thinks appropriate¹⁴.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 Insolvency Act 1986 s 8, Sch B1 para 81(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

5 Insolvency Act 1986 Sch B1 para 81(2)(a) (as added: see note 4 supra). For the meaning of 'administration order' see para 212 ante.

6 Ibid Sch B1 para 81(2)(b) (as added: see note 4 supra).

7 Service must be effected not less than five business days before the date fixed for the hearing: Insolvency Rules 1986, SI 1986/1925, r 2.115(2) (rr 2.1(2), 2.115, 2.116, Sch 4 Form 2.33B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'business day' see para 113 note 4 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.115(1) (as substituted: see note 7 supra). Where the appointment was made by the holder of a floating charge under the Insolvency Act 1986 Sch B1 para 14 (as added) (see para 228 et seq ante), a copy of the application must also be served on the holder of the floating charge by virtue of which the appointment was made: Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.115(1) (as so substituted). For the meanings of 'floating charge' and 'holder of a qualifying floating charge' see para 212 note 3 ante.

9 Ibid r 2.115(2) (as substituted: see note 7 supra).

10 Insolvency Act 1986 Sch B1 para 81(1) (as added: see note 4 supra). Where the court makes an order to end the administration, it must send a copy of the order to the administrator (Insolvency Rules 1986, SI 1986/1925, r 2.115(3) (as substituted: see note 7 supra)), and the administrator must notify the registrar of companies in the specified form, attaching a copy of the court order and a copy of his final progress report: r 2.116 (as substituted: see note 7 supra). As to the specified form see Sch 4 Form 2.33B (as substituted: see note 7 supra). For the meaning of 'final progress report' see para 364 note 7 ante. Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect, the administrator must send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order: Insolvency Act 1986 Sch B1 para 86(1), (2) (as so added). Failure to comply with this requirement is an offence punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 4 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect and the administrator was appointed by administration order, the court must discharge the administration order: Sch B1 para 85 (as so added).

11 Ibid Sch B1 para 81(3)(a) (as added: see note 4 supra).

12 Ibid Sch B1 para 81(3)(b) (as added: see note 4 supra).

13 Ibid Sch B1 para 81(3)(c) (as added: see note 4 supra).

14 Ibid Sch B1 para 81(3)(d) (as added: see note 4 supra). Any such order may be in addition to, in consequence of, or instead of the order applied for: Sch B1 para 81(3)(d) (as so added).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

368 Creditor's application to end administration

NOTES 7, 10--SI 1986/1925 Sch 4 Form 2.33B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/E. ADMINISTRATION ENDING IN THE PUBLIC INTEREST/369. Public interest winding up.

E. ADMINISTRATION ENDING IN THE PUBLIC INTEREST

369. Public interest winding up.

Where a winding up-order is made for the winding up of a company¹ in administration² on a petition presented on grounds of public interest³, or where a provisional liquidator of a company in administration is appointed following the presentation of a public-interest petition⁴, the court⁵ must order that the appointment of the administrator⁶ is either to cease to have effect⁷ or to continue to have effect⁸.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'in administration' see para 214 note 4 ante.

3 Ie on a petition presented under: (1) the Insolvency Act 1986 s 124A (as added and amended) (petition for winding-up in grounds of public interest: see para 444 post); or (2) the Financial Services and Markets Act 2000 s 367 (winding-up by the court: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497); Insolvency Act 1986 s 8, Sch B1 para 82(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 Insolvency Act 1986 Sch B1 para 82(2) (as added: see note 3 supra). The reference in the text to a public-interest petition is a reference to a petition presented under any of the provisions listed in note 3 supra: Sch B1 para 82(2) (as so added).

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

7 Insolvency Act 1986 Sch B1 para 82(3)(a) (as added: see note 3 supra). Where the court makes an order to end the administration, the administrator must notify the registrar of companies in the specified form, attaching a copy of the court order and a copy of his final progress report: Insolvency Rules 1986, SI 1986/1925, r 2.116 (r 2.116, Sch 4 Form 2.33B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the specified form see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 2.33B (as so substituted). For the meaning of 'final progress report' see para 364 note 7 ante. Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect, the administrator must send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order: Insolvency Act 1986 Sch B1 para 86(1), (2) (as so added). Failure to comply with this requirement is an offence punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 3 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. Where the court makes an order providing for the appointment of an administrator of a company to cease to have effect and the administrator was appointed by administration order, the court must discharge the administration order: Sch B1 para 85 (as so added). For the meaning of 'administration order' see para 212 ante.

8 Ibid Sch B1 para 82(3)(b) (as added: see note 3 supra). If the court makes an order under Sch B1 para 82(3)(b) (as added), it may also specify which of the powers under Sch B1 (as so added) are to be exercisable by the administrator (Sch B1 para 82(4)(a) (as so added)) and order that Sch B1 (as added) is to have effect in

relation to the administrator with specified modifications (Sch B1 para 82(4)(b) (as so added)). For the meaning of 'modifications' see para 84 note 5 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

369 Public interest winding up

NOTE 6--SI 1986/1925 Sch 4 Form 2.33B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/F. TRANSITION FROM ADMINISTRATION TO CREDITORS' VOLUNTARY LIQUIDATION/370. Cessation of administration and replacement with creditors' voluntary liquidation.

F. TRANSITION FROM ADMINISTRATION TO CREDITORS' VOLUNTARY LIQUIDATION

370. Cessation of administration and replacement with creditors' voluntary liquidation.

If the administrator¹ of a company² thinks that the total amount which each secured creditor of the company is likely to receive has been paid to or set aside for him³, and that a distribution will be made to unsecured creditors of the company (if there are any)⁴, he may notify the registrar of companies of the fact⁵. On receipt of such a notice the registrar must register it⁶, whereupon the administrator's appointment in respect of the company ceases to have effect⁷ and the company will be wound up as if a resolution for voluntary winding up⁸ were passed on the day on which the notice is registered⁹. The liquidator for the purposes of the winding up will be either a person nominated by the creditors of the company in the prescribed manner and within the prescribed period¹⁰ or, if no such person is nominated, the administrator¹¹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 Insolvency Act 1986 s 8, Sch B1 para 83(1)(a) (s 8 substituted, and Sch B1 added, by the Enterprise Act 2002 s 248(1), (1), Sch 16). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante.

4 Insolvency Act 1986 Sch B1 para 83(1)(b) (as added: see note 3 supra).

5 Ibid Sch B1 para 83(3) (as added: see note 3 supra). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the form of the notice see the Insolvency Rules 1986, SI 1986/1925, r 2.117(1), Sch 4 Form 2.34B (r 2.117, Sch 4 Form 2.34B substituted by SI 2003/1730). The administrator must attach to the notice a final progress report which must include details of the assets to be dealt with in the liquidation: Insolvency Rules 1986, SI 1986/1925, r 2.117(1) (as so substituted). For the meaning of 'final progress report' see para 364 note 7 ante. If the administrator sends such a notice he must as soon as is reasonably practicable file a copy of the notice with the court (Insolvency Act 1986 Sch B1 para 83(5)(a) (as added: see note 3 supra)), send a copy of the notice to each creditor of whose claim and address he is aware (Sch B1 para 83(5)(b) (as so added)), and send a copy of the notice and the attached document to all those who received notice of his appointment (Insolvency Rules 1986, SI 1986/1925, r 2.117(2) (as so substituted)). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 Insolvency Act 1986 Sch B1 para 83(3) (as added: see note 3 supra).

7 Ibid Sch B1 para 83(6)(a) (as added: see note 3 supra).

8 Ie under ibid s 84 (as amended) (see para 939 post). In the application of Pt IV (ss 73-219) (as amended) to a winding up by virtue of this provision: (1) ss 85, 89, 98-100 (as amended) (see paras 941, 944-945, 947, 953 post) will not apply; (2) ss 86, 129 (as amended) (see paras 489, 996 post) will apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under Sch B1 para 83(3) (as added); and (3) any creditors' committee which is in existence immediately before the company ceases to be in administration will continue in existence after that

time as if appointed as a liquidation committee under s 101 (see para 994 post): Sch B1 para 83(8) (as so added). As to creditors' committees see para 298 et seq ante.

9 Ibid Sch B1 para 83(6)(b) (as added: see note 3 supra).

10 Ibid Sch B1 para 83(7)(a) (as added: see note 3 supra). For these purposes, a person is to be nominated in accordance with the Insolvency Rules 1986, SI 1986/1925, r 2.33(2)(m) (as substituted) (see para 273 ante) or r 2.45(2)(g) (as substituted) (see para 292 ante) and his appointment takes effect by the creditors' approval, with or without modification, of the administrator's proposals or revised proposals: r 2.117(3) (as substituted: see note 5 supra).

11 Insolvency Act 1986 Sch B1 para 83(7)(b) (as added: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

370 Cessation of administration and replacement with creditors' voluntary liquidation

TEXT AND NOTES--SI 1986/1925 r 2.117 substituted by r 2.117A: SI 2010/686.

NOTE 5--SI 1986/1925 Sch 4 Form 2.34B revoked: SI 2010/686.

NOTE 7--If by the date of registration the administrators have already ceased to hold office, the 1986 Act Sch B1 para 83(6)(a) has no effect: *Re E Squared Ltd*; *Re Sussex Pharmaceuticals Ltd* [2006] EWHC 532 (Ch), [2006] 3 All ER 779.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/G. TRANSITION FROM ADMINISTRATION TO DISSOLUTION/371. Cessation of administration and replacement with dissolution.

G. TRANSITION FROM ADMINISTRATION TO DISSOLUTION

371. Cessation of administration and replacement with dissolution.

If the administrator¹ of a company² thinks that the company has no property which might permit a distribution to its creditors, he must send a notice to that effect to the registrar of companies⁴. On receipt of such a notice the registrar must register it⁵, whereupon the administrator's appointment ceases to have effect⁶ and, at the end of the period of three months beginning with the date of registration⁷, the company is deemed to be dissolved⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 As to the meaning of 'company' see para 212 note 1 ante.

3 As to the meaning of 'property' see para 489 note 8 post.

4 Insolvency Act 1986 s 8, Sch B1 para 84(1) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the form of the notice see the Insolvency Rules 1986, SI 1986/1925, r 2.118(1), Sch 4 Form 2.35B (rr 2.1, 2.118, Sch 4 Form 2.35B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. The administrator must attach to the notice a final progress report: Insolvency Rules 1986, SI 1986/1925, r 2.118(1) (as so substituted). For the meaning of 'final progress report' see para 364 note 7 ante. If the administrator sends such a notice he must as soon as is reasonably practicable file a copy of the notice with the court (Insolvency Act 1986 Sch B1 para 84(5)(a) (as so added)), send a copy of the notice to each creditor of whose claim and address he is aware (Sch B1 para 84(5) (b) (as so added)), and send a copy of the notice and the attached document to all those who received notice of his appointment (Insolvency Rules 1986, SI 1986/1925, r 2.118(2) (as so substituted)). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. An administrator commits an offence if he fails without reasonable excuse to comply with the Insolvency Act 1986 Sch B1 para 84(5) (as added): Sch B1 para 84(9) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as so amended). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

The court may on the application of the administrator disapply Sch B1 para 84(1) (as added): Sch B1 para 84(2) (as so added).

5 Ibid Sch B1 para 84(3) (as added: see note 4 supra).

6 Ibid Sch B1 para 84(4) (as added: see note 4 supra).

7 As to the amendment of provisions concerning time-periods see para 228 note 4 ante.

8 Insolvency Act 1986 Sch B1 para 84(6) (as added: see note 4 supra). On an application in respect of a company by the administrator or another interested person, the court may extend or suspend the three-month period specified in Sch B1 para 84(6) (as added) or disapply Sch B1 para 84(6) (as added) altogether: Sch B1 para 84(7) (as so added). As to the making of applications see para 1055 et seq post. Where a court makes an order under Sch B1 para 84(7) (as added) in respect of a company, the administrator must as soon as is reasonably practicable notify the registrar of companies (Sch B1 para 84(8) (as so added)), and where the applicant is not the administrator, the court must give a copy of the order to the administrator (Insolvency Rules 1986, SI 1986/1925, r 2.118(3) (as substituted: see note 4 supra)). The administrator must use the form set out

in Sch 4 Form 2.36B to notify the registrar of companies in accordance with the Insolvency Act 1986 Sch B1 para 84(8) (as added) of any order made by the court under Sch B1 para 84(7) (as added): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.114(4) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.118(4) as so substituted).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

371 Cessation of administration and replacement with dissolution

TEXT AND NOTES--SI 1986/1925 r 2.118 amended, Sch 4 Form 2.35B revoked: SI 2010/686.

An administrator or former administrator must within 14 days of a request by the Secretary of State give the latter particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or dividends or other sums due to any person as a member or former member of the company: Insolvency Regulations 1994, SI 1994/2507, reg 3A(2) (reg 3A added by SI 2005/512).

TEXT AND NOTES 1-4--This means that if, a distribution having already been made, the administrator thinks that the company has no further property which might permit a distribution to creditors, he must send a notice to that effect to the registrar of companies: *Re GHE Realisations Ltd (formerly Gatehouse Estates Ltd)* [2005] EWHC 2400 (Ch), [2006] 1 WLR 287, [2005] All ER (D) 64 (Nov). See also *Re Lehman Brothers International (Europe) (in administration)* [2009] EWHC 3228 (Ch), [2010] All ER (D) 143 (Jan).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(vii) Ending Administration/H. CONVERSION OF ADMINISTRATION INTO WINDING UP BY MEMBER STATE LIQUIDATOR/372. Application for conversion into winding up.

H. CONVERSION OF ADMINISTRATION INTO WINDING UP BY MEMBER STATE LIQUIDATOR

372. Application for conversion into winding up.

Where a member state liquidator¹ proposes to apply to the court² for the conversion of an administration into a winding up³, an affidavit must be prepared and sworn⁴, and filed with the court⁵ in support of the application⁶. The application and the affidavit must be served upon the company⁷ and the administrator⁸. On hearing the application, the court may make such order as it thinks fit⁹.

A member state liquidator appointed under these provisions is deemed to be a creditor of the company for certain purposes¹⁰. Where the administrator¹¹ is obliged to give notice, or provide a copy of a document (including an order of court), to the court, the registrar of companies or the official receiver, the administrator must give notice or provide copies, as the case may be, to the member state liquidator¹².

1 For the meaning of 'member state liquidator' see para 460 note 15 post.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

3 I.e. under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 37: Insolvency Rules 1986, SI 1986/1925, r 2.130(1) (rr 2.1(2), 2.130-2.133 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

4 The affidavit must state: (1) that main proceedings have been opened in relation to the company in a member state other than the United Kingdom (Insolvency Rules 1986, SI 1986/1925, r 2.131(1)(a) (as substituted: see note 3 supra)); (2) the deponent's belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings (r 2.131(1)(b) (as so substituted)); (3) the deponent's opinion as to whether the company ought to enter voluntary winding up or be wound up by the court (r 2.131(1)(c) (as so substituted)); and (4) all other matters that, in the opinion of the member state liquidator, would assist the court in deciding whether to make such an order and, if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable (r 2.131(1)(d) (as so substituted)). As to the meaning of 'company' see para 212 note 1 ante. For the meaning of 'main proceedings' see para 460 note 16 post. The affidavit must be sworn by, or on behalf of, the member state liquidator: r 2.131(2) (as so substituted). For the meaning of 'United Kingdom' see para 12 note 2 ante.

5 For the meaning of 'file with the court' see para 129 note 3 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.130(1) (as substituted: see note 3 supra). An application under these provisions is an originating application: r 2.130(2) (as so substituted).

7 Ibid 2.130(3)(a) (as substituted: see note 3 supra).

8 Ibid 2.130(3)(b) (as substituted: see note 3 supra). For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

9 Ibid 2.132(1) (as substituted: see note 3 supra). Without prejudice to the generality of r 2.132(1) (as substituted), an order thereunder may provide that the company be wound up as if a resolution for voluntary winding up under the Insolvency Act 1986 s 84 (as amended) (see para 939 post) were passed on the day on

which the order is made: Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.132(3) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.132(3) as so substituted). If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable: r 2.132(2) (as so substituted).

10 Ibid 2.133(1), (2) (as substituted: see note 3 supra). The purposes for which the member state liquidator is deemed to be a creditor are the purposes of r 2.34 (as substituted) (notice of creditors' meeting: see para 287 ante), r 2.35(4) (as substituted) (entitlement to notification of creditors' meeting: see para 275 ante), r 2.37 (as substituted) (requisitioning of creditors' meeting: see para 289 ante), r 2.38 (as substituted) (entitlement to vote: see para 280 ante), r 2.39 (as substituted) (admission and rejection of claims: see para 281 ante), r 2.40 (as substituted) (secured creditors' entitlement to vote: see para 282 ante), r 2.41 (as substituted) (holders' of negotiable instruments entitlement to vote: see para 283 ante), r 2.42 (as substituted) (hire-purchase, conditional sale and chattel leasing agreements; entitlement to vote: see para 284 ante), r 2.46 (as substituted) (notice to creditors: see para 293 ante), r 2.47 (as substituted) (reports to creditors: see para 311 ante), r 2.48 (as substituted) (correspondence instead of creditors' meeting: see para 297 ante), r 2.50(2) (as substituted) (creditors' committee: see para 298 ante), r 2.57(1)(b), (c) (as substituted) (termination of membership of creditors' committee: see para 301 ante), r 2.59(3) (as substituted) (vacancies in creditors' committee: see para 302 ante), r 2.108(3) (as substituted) (administrator's remuneration; recourse to court: see para 377 post) and r 2.109 (as substituted) (challenge to administrator's remuneration: see para 378 post): r 2.133(3) (as so substituted). The provisions of r 2.133(2), (3) (as substituted) are without prejudice to the generality of the right to participate referred to in the European Regulation on Insolvency Proceedings art 32(3) (exercise of creditor's rights): see the Insolvency Rules 1986, SI 1986/1925, r 2.133(4) (as so substituted).

11 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 2.133(5) (as substituted: see note 3 supra). This is without prejudice to the generality of the obligations imposed by the European Regulation on Insolvency Proceedings art 31 (duty to co-operate and communicate information): Insolvency Rules 1986, SI 1986/1925, r 2.133(6) (as so substituted). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the official receiver see para 503 et seq post.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

372 Application for conversion into winding up

TEXT AND NOTES--SI 1986/1925 r 2.130(1) substituted by r 2.130(1), (1A): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(viii) Extending Administration/373. Extension of administration by court order.

(viii) Extending Administration

373. Extension of administration by court order.

An application to court¹ for an extension of administration² must be accompanied by a progress report³ for the period since the last progress report (if any) or the date the company⁴ entered administration⁵. Notice must be given in the specified form⁶.

An order of the court for these purposes may be made in respect of an administrator⁷ whose term of office has already been extended by order or by consent⁸, but may not be made after the expiry of the administrator's term of office⁹. Where such an order is made, the administrator must as soon as is reasonably practicable notify the registrar of companies¹⁰.

1 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

2 Ie under the Insolvency Act 1986 Sch B1 para 76(2)(a) (as added) (see para 363 ante).

3 For the meaning of 'progress report' see para 311 ante.

4 As to the meaning of 'company' see para 212 note 1 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.112(1) (r 2.112, Sch 4 Form 2.31B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'enters administration' see para 212 note 1 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.112(3) (as substituted: see note 5 supra). As to the specified form see r 2.112(3), Sch 4 Form 2.31B (as so substituted).

7 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

8 Insolvency Act 1986 s 8, Sch B1 para 77(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to extension by consent see para 374 post.

9 Insolvency Act 1986 Sch B1 para 77(1)(b) (as added: see note 8 supra). As to the expiry of the administrator's term of office see para 363 ante.

10 Ibid Sch B1 para 77(2) (as added: see note 8 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. An administrator who fails without reasonable excuse to comply with this requirement commits an offence: Sch B1 para 77(3) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 8 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

373 Extension of administration by court order

NOTES 5, 6--SI 1986/1925 r 2.112(3) substituted by r 2.112(3)-(5), Sch 4 Form 2.31B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(viii) Extending Administration/374. Extension of administration by consent.

374. Extension of administration by consent.

For the purposes of the provision enabling an administrator¹ to extend his term of office by consent², 'consent' means:

- 759 (1) consent of each secured creditor of the company³; and
- 760 (2) (if the company has unsecured debts) consent of creditors whose debts amount to more than 50 per cent of the company's unsecured debts⁴.

If, however, the administrator has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors⁵, 'consent' means either:

- 761 (a) consent of each secured creditor of the company⁶; or
- 762 (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of each secured creditor of the company and of preferential creditors whose debts amount to more than 50 per cent of the preferential debts of the company⁷.

Consent may be either written⁸ or signified at a creditors' meeting⁹.

When the administrator requests an extension of the period of the administration by consent of creditors, his request must be accompanied by a progress report¹⁰ for the period since the last progress report (if any) or the date the company entered administration¹¹. Notice must be given in the specified form¹². Where an administrator's term of office is extended by consent, he must as soon as is reasonably practicable file notice of the extension with the court¹³ and notify the registrar of companies¹⁴.

An administrator's term of office may be extended by consent only once¹⁵, may not be extended by consent after extension by order of the court¹⁶, and may not be extended by consent after expiry¹⁷.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 Ie the Insolvency Act 1986 Sch B1 para 76(2)(b) (as added) (see para 363 ante).

3 Ibid s 8, Sch B1 para 78(1)(a) (s 8 substituted, Sch B1 added, and Sch 10 amended, by the Enterprise Act 2002 s 248(1)-(3), Sch 16, Sch 17 paras 9, 39(1), (2)). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 ante. As to the meaning of 'company' see para 212 note 1 ante.

4 Insolvency Act 1986 Sch B1 para 78(1)(b) (as added: see note 3 supra). Debts of any creditor who does not respond to an invitation to give or withhold consent are disregarded for this purpose: Sch B1 para 78(1)(b) (as so added).

5 Ie under ibid Sch B1 para 52(1)(b) (as added) (see para 288 ante).

6 Ibid Sch B1 para 78(2)(a) (as added: see note 3 supra).

7 Ibid Sch B1 para 78(2)(b) (as added: see note 3 supra). Debts of any creditor who does not respond to an invitation to give or withhold consent are disregarded for this purpose: Sch B1 para 78(2)(b) (as so added).

8 Ibid Sch B1 para 78(3)(a) (as added: see note 3 supra). As to things in writing see para 228 note 5 ante.

9 Ibid Sch B1 para 78(3)(b) (as added: see note 3 supra).

10 For the meaning of 'progress report' see para 311 ante.

11 Insolvency Rules 1986, SI 1986/1925, r 2.112(1) (r 2.112, Sch 4 Form 2.31B substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. For the meaning of 'enters administration' see para 212 note 1 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 2.112(3) (as substituted: see note 11 supra). As to the specified form see r 2.112(3), Sch 4 Form 2.31B (as so substituted).

13 Insolvency Act 1986 Sch B1 para 78(5)(a) (as added: see note 3 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. For the meaning of 'file with the court' see para 129 note 3 ante.

14 Ibid Sch B1 para 78(5)(b) (as added: see note 3 supra). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. An administrator who fails without reasonable excuse to comply with this requirement commits an offence: Sch B1 para 78(6) (as so added). The offence is punishable summarily by a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, by a daily default fine not exceeding one-fiftieth of the statutory maximum: s 430, Sch B1 para 106 (as so added), Sch 10 (as amended: see note 3 supra). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

15 Ibid Sch B1 para 78(4)(a) (as added: see note 3 supra).

16 Ibid Sch B1 para 78(4)(b) (as added: see note 3 supra). As to extension by order of the court see para 373 ante.

17 Ibid Sch B1 para 78(4)(c) (as added: see note 3 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

374 Extension of administration by consent

NOTES 11, 12--SI 1986/1925 r 2.112(3) substituted by r 2.112(3)-(5), Sch 4 Form 2.31B revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ix) Administrator's Remuneration/375. Fixing of remuneration.

(ix) Administrator's Remuneration

375. Fixing of remuneration.

The administrator¹ is entitled to receive remuneration for his services as such². The remuneration must be fixed either:

- 763 (1) as a percentage of the value of the property with which he has to deal³; or
- 764 (2) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration⁴.

It is for the creditors' committee⁵ (if there is one) to determine by which of these standards the remuneration is to be fixed and, if it is to be fixed as a percentage of the value of property, to determine any percentage to be applied as there mentioned⁶. If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed⁷ by a resolution of a meeting of creditors⁸. If not fixed by either of these means, the administrator's remuneration must, on his application⁹, be fixed by the court¹⁰.

Where there are joint administrators¹¹, it is for them to agree between themselves as to how the remuneration payable should be apportioned¹², although any dispute arising between them may be referred to the court, for settlement by order¹³, or to the creditors' committee or a meeting of creditors, for settlement by resolution¹⁴.

If the administrator is a solicitor¹⁵ and employs his own firm, or any partner in it, to act on behalf of the company, profit costs must not be paid unless this is authorised by the creditors' committee, the creditors or the court¹⁶.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.106(1) (rr 2.1(2), 2.106 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.106(2)(a) (as substituted: see note 2 supra).

4 Ibid r 2.106(2)(b) (as substituted: see note 2 supra).

5 As to creditors' committees see para 298 et seq ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.106(3) (as substituted: see note 2 supra). In arriving at this determination, the committee must have regard to: the complexity (or otherwise) of the case (r 2.106(4)(a) (as so substituted)); any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree (r 2.106(4)(b) (as so substituted)); the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such (r 2.106(4)(c) (as so substituted)); and the value and nature of the property with which he has to deal (r 2.106(4)(d) (as so substituted)). As to the meaning of 'company' see para 212 note 1 ante.

7 In accordance with ibid r 2.106(2) (as substituted) (see the text and notes 3, 4 supra): r 2.106(5) (as substituted: see note 2 supra).

8 Ibid r 2.106(5) (as substituted: see note 2 supra). As to creditors' meetings see para 275 et seq ante. Where remuneration is to be fixed by a resolution of a creditors' meeting, r 2.106(4) (see note 6 supra) applies to the creditors as it applies to the creditors' committee: r 2.106(5) (as so substituted). If the administrator has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors (ie under the Insolvency Act 1986 Sch B1 para 52(1)(b) (as added) (see para 288 ante)), a resolution of the creditors must be taken as passed if (and only if) passed with the approval of each secured creditor of the company and (if the administrator has made or intends to make a distribution to preferential creditors) preferential creditors whose debts amount to more than 50% of the preferential debts of the company (disregarding debts of any creditor who does not respond to an invitation to give or withhold approval): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.106(9) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.106(9) as so substituted).

9 As to the making of applications see para 1055 et seq post.

10 Insolvency Rules 1986, SI 1986/1925, r 2.106(6) (as substituted: see note 2 supra). For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

11 As to joint administrators see paras 259-260 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 2.106(7) (as substituted: see note 2 supra).

13 Ibid r 2.106(7)(a) (as substituted: see note 2 supra).

14 Ibid r 2.106(7)(b) (as substituted: see note 2 supra).

15 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

16 Insolvency Rules 1986, SI 1986/1925, r 2.106(8) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

375 Fixing of remuneration

TEXT AND NOTES--SI 1986/1925 r 2.106 amended: SI 2010/686.

TEXT AND NOTES 7, 8--In a case where the administrator has made a statement under the Insolvency Act 1986 Sch B1 para 52(1)(b) (see PARA 288), if there is no creditors' committee, or the committee does not make the requisite determination, the basis of the administrator's remuneration may be fixed (in accordance with r 2.106(2)) by the approval of (1) each secured creditor of the company; or (2) if the administrator has made or intends to make a distribution to preferential creditors (a) each secured creditor of the company; and (b) preferential creditors whose debts amount to more than 50 per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval: r 2.106(5A) (added by SI 2005/527, amended by SI 2010/686). Where such approval is made, SI 1986/1925 r 2.106(4) applies to them as it does to the creditors' committee: r 2.106(5A) (as so added). Rule 2.106(9) revoked: SI 2005/527.

TEXT AND NOTE 9--For 'fixed by either of these means' read 'fixed by SI 1986/1925 r 2.106(2) or (5A)': r 2.106(6).

NOTE 15--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ix) Administrator's Remuneration/376. Recourse to meeting of creditors.

376. Recourse to meeting of creditors.

If the administrator's¹ remuneration has been fixed by the creditors' committee², and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors³.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 See para 375 ante. As to creditors' committees see para 298 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 2.107 (rr 2.1(2), 2.106, 2.107 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante. If the administrator has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors (ie under the Insolvency Act 1986 Sch B1 para 52(1)(b) (as added) (see para 288 ante)), a resolution of the creditors must be taken as passed if (and only if) passed with the approval of each secured creditor of the company and (if the administrator has made or intends to make a distribution to preferential creditors) preferential creditors whose debts amount to more than 50% of the preferential debts of the company (disregarding debts of any creditor who does not respond to an invitation to give or withhold approval): Insolvency Rules 1986, SI 1986/1925, rr 0.2(1), 2.1(2), 2.106(9) (r 0.2(1) substituted by SI 1999/1022; Insolvency Rules 1986, SI 1986/1925, rr 2.1(2), 2.106(9) as so substituted). As to the meaning of 'company' see para 212 note 1 ante.

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

376 Recourse to meeting of creditors

TEXT AND NOTES--SI 1986/1925 r 2.107 now r 2.107(1) (amended by SI 2005/527). In a case where the administrator has made a statement under the Insolvency Act 1986 Sch B1 para 52(1)(b) (see PARA 288), if the basis of the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by the approval of (1) each secured creditor of the company; or (2) if the administrator has made or intends to make a distribution to preferential creditors (a) each secured creditor of the company; and (b) preferential creditors whose debts amount to more than 50 per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval: SI 1986/1925 r 107(2) (added by SI 2005/527, amended by SI 2010/686).

NOTE 3--SI 1986/1925 r 2.106(9) revoked: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ix) Administrator's Remuneration/377. Recourse to the court.

377. Recourse to the court.

If the administrator¹ considers that the remuneration fixed for him by the creditors' committee², or by resolution of the creditors³, is insufficient, he may apply to the court⁴ for an order increasing its amount or rate⁵. The administrator must give at least 14 days' notice of such an application to the members of the creditors' committee; and the committee may nominate one or more members to appear, or be represented, and to be heard on the application⁶. If there is no creditors' committee, the administrator's notice of his application must be sent to such one or more of the company's⁷ creditors as the court may direct, and those creditors may nominate one or more of their number to appear or be represented⁸. The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration⁹.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 See para 375 ante. As to creditors' committees see para 298 et seq ante.

3 See paras 375-376 ante.

4 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 2.108(1) (r 2.108 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 2.108(2) (as substituted: see note 5 supra).

7 As to the meaning of 'company' see para 212 note 1 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 2.108(3) (as substituted: see note 5 supra).

9 Ibid r 2.108(4) (as substituted: see note 5 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

377 Recourse to the court

TEXT AND NOTES 1-5--In a case where the administrator has made a statement under the Insolvency Act 1986 Sch B1 para 52(1)(b) (see PARA 288), if the administrator considers that the remuneration fixed by the approval of the creditors in accordance with r 2.107(2) is insufficient, he may apply to the court for an order increasing its amount or

rate: r 2.108(1A) (added by SI 2005/527). Where such an application is made, the administrator must give notice to each of the creditors whose approval was sought under SI 1986/1925 r 2.106(5A): r 2.108(1B) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(ix) Administrator's Remuneration/378. Creditors' claim that remuneration is excessive.

378. Creditors' claim that remuneration is excessive.

Any creditor of the company¹ may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court² for an order that the administrator's³ remuneration be reduced, on the grounds that it is, in all the circumstances, excessive⁴. The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application without a hearing but it must not do so without giving the applicant at least seven days' notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing⁵. If the application is not dismissed, the court must fix a venue⁶ for it to be heard, and give notice to the applicant accordingly⁷. The applicant must, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it⁸. If the court considers the application to be well-founded, it must make an order fixing the remuneration at a reduced amount or rate⁹. Unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable as an expense of the administration¹⁰.

1 As to the meaning of 'company' see para 212 note 1 ante.

2 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post. As to the making of applications see para 1055 et seq post.

3 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 2.109(1) (r 2.109 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 2.109(2) (as substituted: see note 4 supra).

6 For the meaning of 'venue' see para 91 note 7 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 2.109(2) (as substituted: see note 4 supra).

8 Ibid r 2.109(3) (as substituted: see note 4 supra).

9 Ibid r 2.109(4) (as substituted: see note 4 supra).

10 Ibid r 2.109(5) (as substituted: see note 4 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

378 Creditors' claim that remuneration is excessive

TEXT AND NOTES--See SI 1986/1925 r 2.109A (review of remuneration), r 2.109B (remuneration of new administrator), and r 2.109C (apportionment of set fee remuneration) (added by SI 2010/686).

TEXT AND NOTES 4, 9--SI 1986/1925 r 2.109(1), (4) substituted by r 2.109(1), (1A), (1B), (4): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/5. ADMINISTRATION/(3) ADMINISTRATION UNDER THE ENTERPRISE ACT 2002/(x) Expenses of the Administration/379. Priority of expenses.

(x) Expenses of the Administration

379. Priority of expenses.

The expenses of the administration are payable in the following order of priority:

- 765 (1) expenses properly incurred by the administrator¹ in performing his functions in the administration of the company²;
- 766 (2) the cost of any security provided by the administrator in accordance with the Insolvency Act 1986 or the Insolvency Rules 1986³;
- 767 (3) where an administration order⁴ was made, the costs of the applicant and any person appearing on the hearing of the application and where the administrator was appointed otherwise than by order of the court⁵, any costs and expenses of the appointor in connection with the making of the appointment and the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator⁶;
- 768 (4) any amount payable to a person employed or authorised⁷ to assist in the preparation of a statement of affairs or statement of concurrence⁸;
- 769 (5) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence⁹;
- 770 (6) any necessary disbursements by the administrator in the course of the administration (including any expenses incurred by members of the creditors' committee¹⁰ or their representatives and allowed for by the administrator¹¹, but not including any payment of corporation tax in circumstances referred to in head (9) below)¹²;
- 771 (7) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Insolvency Act 1986 or the Insolvency Rules 1986¹³;
- 772 (8) the agreed remuneration of the administrator¹⁴;
- 773 (9) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company¹⁵ (without regard to whether the realisation is effected by the administrator, a secured creditor, or a receiver or manager appointed to deal with a security)¹⁶.

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just¹⁷, and the priorities set out above are subject to that power¹⁸.

1 For the meaning of 'administrator' see para 212 note 1 ante. As to joint and concurrent administrators see paras 259-260 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 2.67(1)(a) (r 2.67 substituted by SI 2003/1730). As to savings relating to special administration regimes and administrations commencing prior to 15 September 2003 see para 145 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 0.2(1) (substituted by SI 1999/1022); Insolvency Rules 1986, SI 1986/1925, r 2.67(1)(b) (as substituted: see note 2 supra).

4 For the meaning of 'administration order' see para 212 ante.

5 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 2.67(1)(c) (as substituted: see note 2 supra).

7 *Ie* under *ibid* Pt 2 Ch 5 (rr 2.27-2.33) (as substituted) (see para 264 et seq ante): r 2.67(2)(d) (as substituted: see note 2 supra).

8 *Ibid* r 2.67(2)(d) (as substituted: see note 2 supra).

9 *Ibid* r 2.67(2)(e) (as substituted: see note 2 supra).

10 As to creditors' committees see para 298 et seq ante.

11 *Ie* under the Insolvency Rules 1986, SI 1986/1925, r 2.63 (as substituted) (see para 303 ante): r 2.67(1)(f) (as substituted: see note 2 supra).

12 *Ibid* r 2.67(1)(f) (as substituted: see note 2 supra).

13 *Ibid* r 2.67(1)(g) (as substituted: see note 2 supra).

14 *Ibid* r 2.67(1)(h) (as substituted: see note 2 supra). The administrator's remuneration is agreed under Pt 2 Ch 11 (rr 2.106-2.109) (as substituted) (see paras 375-378 ante): r 2.67(1)(h) (as so substituted).

15 As to the meaning of 'company' see para 212 note 1 ante.

16 Insolvency Rules 1986, SI 1986/1925, r 2.67(1)(j) (as substituted: see note 2 supra).

17 *Ibid* r 2.67(3) (as substituted: see note 2 supra).

18 *Ibid* r 2.67(2) (as substituted: see note 2 supra).

UPDATE

145-379 Administration

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

379 Priority of expenses

TEXT AND NOTES--See SI 1986/1925 r 2.67A (pre-administration costs) (added by SI 2010/686). See *Re Trident Fashions plc; Exeter City Council v Bairstow* [2006] EWCA Civ 203, [2006] All ER (D) 140 (Mar) (claim under SI 1986/1925 r 2.67 may fail on basis that no substantive relief sought).

NOTE 12--See *Re Allders Department Stores Ltd* [2005] EWHC 172 (Ch), [2005] 2 All ER 122 (statutory liabilities for redundancy payments or unfair dismissal claims not necessary disbursements); *Exeter City Council v Bairstow* [2007] EWHC 400 (Ch), [2007] 4 All ER 437 (non-domestic rates were 'necessary disbursements').

6. ADMINISTRATIVE RECEIVERS

(1) IN GENERAL

380. Introduction.

There are many provisions¹ of the Companies Act 1985, the Insolvency Act 1986 and the Insolvency Rules 1986 which apply equally to ordinary receivers, receivers and managers and administrative receivers². However, certain provisions in the Insolvency Act 1986 apply only to administrative receivers and have no application to ordinary receivers³.

1 See COMPANIES vol 15 (2009) PARAS 1340 (appointment of receiver or manager), 1341 (liability for invalid appointment), 1342 (effect of appointment of receiver), 1343 (rates and taxes), 1344 (notification of appointment of receiver), 1345 (corporation not to act as receiver), 1346 (undischarged bankrupt not to act as receiver or manager), 1349 (liability of trustees etc for receiver's acts), 1351 (application to court for directions), 1334 (payment of preferential debts out of assets subject to floating charge), 1354 (transfer of rights under insurance contracts), 1355 (change of status on making of order for winding up or administration), 1356 (court's power to fix remuneration), 1358 (cross-border operation of receivership provisions). See also para 773 post (share of assets for unsecured creditors).

2 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337. See also *Re International Bulk Commodities Ltd* [1993] Ch 77, [1993] 1 All ER 361, where it was held that an administrative receiver can be appointed over the assets of an unregistered company liable to be wound up under the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (see para 1147 et seq post).

3 See para 381 et seq post. Save where otherwise expressly provided, the Insolvency Rules 1986, SI 1986/1925 (as amended) apply to receivers appointed on or after 29 December 1986: r 13.14(1)(a) (amended by SI 1987/1919).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(1) IN GENERAL/381. Interrelationship between administrative receivership and administration order.

381. Interrelationship between administrative receivership and administration order.

Where an application for an administration order is presented to the court¹, notice of the application's presentation must be given forthwith to (inter alios) any person who has appointed, or is or may be entitled to appoint, an administrative receiver² of the company³. Where the court is satisfied that there is an administrative receiver of the company, the court must dismiss the application, unless it is also satisfied either that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order, or that, if an administration order were made, any security by virtue of which the receiver was appointed would be void, liable to be released or discharged, avoided or be challengeable⁴.

During the period beginning with the presentation of an application for an administration order to the court and ending with the making of such an order or the dismissal of the application, no steps may be taken, except with the leave of the court⁵ and subject to such terms as the court may impose, to enforce any security over the company's property⁶; but nothing in this provision requires the leave of the court for the appointment of an administrative receiver of the company, or for the carrying out by such a receiver, whenever appointed, of any of his functions⁷.

Where such an application is presented at a time when there is an administrative receiver of the company, and the person by or on whose behalf the receiver was appointed has not consented to the making of the order, the period mentioned above is deemed not to begin unless and until that person so consents⁸.

On the taking effect of an administration order, any administrative receiver of the company must vacate office⁹. During the period for which such an order is in force no administrative receiver of the company may be appointed¹⁰, and no other steps may be taken to enforce any security over the company's property, except with the consent of the administrator or the leave of the court¹¹ and subject, where the court gives leave, to such terms as the court may impose¹².

1 As to administration orders see para 146 et seq ante.

2 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

3 See the Insolvency Act 1986 s 8, Sch B1 para 12(2)(a), (b) (Sch B1 added by the Enterprise Act 2002 s 248(2), Sch 16); and para 221 ante.

4 See the Insolvency Act 1986 Sch B1 para 39 (as added: see note 3 supra); and para 227 ante.

5 As to the mode of and procedure for applications to the court see para 1055 et seq post.

6 See the Insolvency Act 1986 Sch B1 paras 43(2), 44(5) (as added: see note 3 supra); and paras 224, 231, 239 ante. Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before 29 December 1986, the conditions precedent to the exercise of that right are deemed to include the presentation of an application applying for an administration order to be made in relation to the company: s 437, Sch 11 para 1(1).

7 See *ibid* Sch B1 para 44(7) (as added: see note 3 supra); and paras 224, 231, 239 ante.

8 See *ibid* Sch B1 para 44(6) (as added: see note 3 supra); and para 224 ante.

9 See *ibid* Sch B1 para 41(1) (as added: see note 3 *supra*); and para 262 *ante*. As to the effect of an administrative receiver so vacating office see para 429 *post*.

10 See *ibid* Sch B1 para 43(1), (6A) (as added: see note 3 *supra*); and paras 224, 231, 239 *ante*.

11 See note 5 *supra*.

12 See the Insolvency Act 1986 Sch B1 para 43(1), (2), (7) (as added: see note 3 *supra*); and paras 224, 231, 239 *ante*.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

381 Interrelationship between administrative receivership and administration order

NOTE 6--Insolvency Act 1986 s 437, Sch 11 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/382. Floating charge holder not to appoint administrative receiver.

(2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER

382. Floating charge holder not to appoint administrative receiver.

The holder of a qualifying floating charge in respect of a company's property¹ created on or after 15 September 2003² may not appoint an administrative receiver³ of the company⁴. This applies in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver, by whatever name⁵; but is subject to various exceptions⁶.

1 'Holder of a qualifying floating charge in respect of a company's property' has the same meaning as in the Insolvency Act 1986 s 8, Sch B1 para 14 (as added) (see para 212 ante): s 72A(3) (s 72A added by the Enterprise Act 2002 s 250(1)).

2 The Insolvency Act 1986 s 72A (as added) applies to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument: s 72A(4)(a) (as added: see note 1 supra). An order under s 72A(4)(a) (as added) may make provision which applies generally or only for a specified person, may make different provision for different purposes, and may make transitional provision: s 72A(5) (as so added). The date appointed was 15 September 2003: Insolvency Act 1986, Section 72A (Appointed Date) Order 2003, SI 2003/2095, art 2. As to the Secretary of State see para 11 note 10 ante.

3 For these purposes, 'administrative receiver' has the meaning given by the Insolvency Act 1986 s 251 (see COMPANIES vol 15 (2009) PARA 1337): s 72A(3) (as added: see note 1 supra).

4 Ibid s 72A(1) (as added: see note 1 supra).

5 Ibid s 72A(4)(a) (as added: see note 1 supra).

6 Ibid s 72A(6) (as added (see note 1 supra); and amended by the Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc) Order 2003, SI 2003/1832, art 2(a)). As to the exceptions see the Insolvency Act 1986 ss 72B-72GA (as added); and paras 383-390 post.

The Secretary of State may by order: (1) insert into the Insolvency Act 1986 provision creating an additional exception to s 72A(1) (as added); (2) provide for a provision of the Insolvency Act 1986 which creates an exception to s 72A(1) (as added) to cease to have effect; (3) amend s 72A (as added) in consequence of any such provision; (4) amend any of ss 72B-72G (as added); or (5) amend Sch 2A (as added and amended) (see para 383 et seq post): s 72H(2) (s 72H added by the Enterprise Act 2002 s 250(1)). Any such order must be made by statutory instrument: Insolvency Act 1986 s 72H(3) (as so added). Any such order may make provision which applies generally or only for a specified purpose, may make different provision for different purposes, and may make consequential or supplementary provision or transitional provision: s 72H(4) (as so added). Any such order: (a) in the case of an order under head (5) supra, is subject to annulment in pursuance of a resolution of either House of Parliament; (b) in the case of an order under head (4) supra varying the sum specified in s 72B(1)(a) (as added) (see para 383 post) or s 72E(2)(a) (as added) (see para 387 post), whether or not the order also makes consequential or transitional provision, is subject to annulment in pursuance of a resolution of either House of Parliament; and (c) in the case of any other order under heads (1)-(4) supra, may not be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 72H(5) (as so added).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

382 Floating charge holder not to appoint administrative receiver

NOTE 6--See *Re Dairy Farmers of Britain Ltd* [2009] EWHC 1389 (Ch), [2010] Ch 63, [2009] 4 All ER 241.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/383. Exception to prohibition on appointment of administrative receiver in respect of capital markets.

383. Exception to prohibition on appointment of administrative receiver in respect of capital markets.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver in pursuance of an agreement² which is or forms part of a capital market arrangement if a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million³ under the arrangement and the arrangement involves the issue of a capital market investment⁴.

For these purposes, an arrangement is a capital market arrangement⁵ if:

- 774 (1) it involves a grant of security to a person holding it as trustee for a person⁶ who holds a capital market investment issued by a party to the arrangement⁷; or
- 775 (2) it involves a grant of security to a party to the arrangement who issues a capital market investment or a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment; or
- 776 (3) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party; or
- 777 (4) at least one party guarantees the performance of obligations of another party; or
- 778 (5) at least one party provides security in respect of the performance of obligations of another party; or
- 779 (6) the arrangement involves an option, future or contract for difference⁸.

For these purposes, an investment is a capital market investment if it is a debt instrument⁹ and is rated, listed or traded¹⁰ or designed to be rated, listed or traded¹¹. An investment is also a capital market investment for these purposes if it consists of a bond¹² or commercial paper¹³ issued to one or more of the following:

- 780 (a) an investment professional¹⁴;
- 781 (b) a person who is, when the relevant agreement is entered into, a certified high net worth individual¹⁵;
- 782 (c) a person to whom the provisions relating to high net worth companies, unincorporated associations or partnerships apply¹⁶;
- 783 (d) a person who is, when the relevant agreement is entered into, a certified sophisticated investor¹⁷;
- 784 (e) a person in a state other than the United Kingdom who under the law of that state is not prohibited from investing in bonds or commercial paper¹⁸.

1 le pursuant to the Insolvency Act 1986 s 72A (as added): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 For these purposes, 'agreement' includes an agreement or undertaking effected by contract, deed, or any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction: *ibid* s 72H(1), Sch 2A para 4 (s 72H added by the Enterprise Act 2002 s 250(1); and the Insolvency Act 1986 Sch 2A added by the Enterprise Act 2002 s 250(2), Sch 18).

3 The debt of at least £50 million may be incurred at any time during the life of the capital market arrangement and may be expressed wholly or partly in foreign currency, in which case the sterling equivalent must be calculated as at the time when the arrangement is entered into: Insolvency Act 1986 Sch 2A para 5 (as added: see note 2 supra).

4 Ibid s 72B(1) (s 72B added by the Enterprise Act 2002 s 250(1)).

5 See the Insolvency Act 1986 s 72B(2) (as added: see note 4 supra), Sch 2A para 1(1) (as added (see note 2 supra); and amended by the Insolvency Act 1986 (Amendment) (Administrative Receivership and Capital Market Arrangements) Order 2003, SI 2003/1468, arts 2, 3).

6 A reference to a person in the Insolvency Act 1986 Sch 2A (as added and amended) includes a reference to a partnership or another unincorporated group of persons: Sch 2A para 11 (as added: see note 2 supra). For these purposes, a reference to holding as trustee includes a reference to holding as nominee or agent; a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment; a person holds a capital market investment if he has a legal or beneficial interest in it; and the reference to finance includes the provision of an indemnity: Sch 2A para 1(2) (as so added; and amended by the Insolvency Act 1986 (Amendment) (Administrative Receivership and Capital Market Arrangements) Order 2003, SI 2003/1468, art 1).

7 For these purposes, 'party to an arrangement' includes a party to an agreement which forms part of the arrangement, provides for the raising of finance as part of the arrangement, or is necessary for the purposes of implementing the arrangement: Insolvency Act 1986 Sch 2A para 1(3) (as added: see note 2 supra).

8 Ie an investment of a kind described in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2000, SI 2001/544, arts 83-85: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 224.

9 Ie within ibid art 77: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 224.

10 For these purposes, 'rated' means rated for the purposes of investment by an internationally recognised rating agency; 'listed' means admitted to the official list within the meaning given by the Financial Services and Markets Act 2000 s 103(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 385 et seq); and 'traded' means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market: Insolvency Act 1986 Sch 2A para 2(2) (as added: see note 2 supra). 'Recognised investment exchange' has the meaning given by the Financial Services and Markets Act 2000 s 285 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 684); and 'foreign market' has the same meaning as 'relevant market' in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 67(2) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 280): Insolvency Act 1986 Sch 2A para 2(3) (as so added).

11 Ibid Sch 2A para 2(1) (as added: see note 2 supra).

12 'Bond' is to be construed in accordance with the Financial Services and Markets 2000 (Regulated Activities) Order 2001, SI 2001/544, art 77 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 224): Insolvency Act 1986 Sch 2A para 3(2) (as added: see note 2 supra).

13 'Commercial paper' has the meaning given by the Financial Services and Markets 2000 (Regulated Activities) Order 2001, SI 2001/544, art 9(3) (as substituted) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 93): Insolvency Act 1986 Sch 2A para 3(2) (as added: see note 2 supra). A reference to commercial paper includes a reference to uncertificated units of an eligible debt security where the issue of units corresponds, in accordance with the current terms of issue of the security, to the issue of commercial paper within the meaning of the Financial Services and Markets 2000 (Regulated Activities) Order 2001, SI 2001/544, art 9(3) (as substituted) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 93): Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003, SI 2003/1663, reg 15(1), Sch 2 para 7.

14 Ie within the meaning of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 19(5): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 255. Article 19(5) is applied for these purposes with modifications: see the Insolvency Act 1986 Sch 2A para 3(3)(a) (as added: see note 2 supra).

15 Ie in relation to a communication within the meaning of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 48(2): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 295.

16 Ie ibid art 49(2): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 296. Article 49(2) is applied for these purposes with modifications: see the Insolvency Act 1986 Sch 2A para 3(3)(b) (as added: see note 2 supra).

17 le in relation to a communication within the meaning of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, SI 2001/1335, art 50(1): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 297, 298.

18 Insolvency Act 1986 Sch 2A para 3(1) (as added: see note 2 supra). For the meaning of 'United Kingdom' see para 12 note 2 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

383 Exception to prohibition on appointment of administrative receiver in respect of capital markets

NOTE 10--SI 2001/1335 art 67(2) now Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, SI 2005/1529, art 67(2).

NOTE 13--SI 2003/1663 should read SI 2003/1633.

NOTE 14--SI 2001/1335 art 19(5) now SI 2005/1529 art 19(5).

NOTE 15--Now *ibid* art 48(2).

NOTE 17--Now *ibid* art 50(1).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/384. Exception to prohibition on appointment of administrative receiver in respect of public-private partnerships.

384. Exception to prohibition on appointment of administrative receiver in respect of public-private partnerships.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a project company² of a project which is a public-partnership project and includes step-in rights³. For these purposes, 'public-private partnership project' means a project the resources⁴ for which are provided partly by one or more public bodies and partly by one or more private persons or which is designed wholly or mainly for the purpose of assisting a public body⁵ to discharge a function⁶.

1 Ie pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 For these purposes, a company is a 'project company' of a project if: (1) it holds property for the purpose of the project; (2) it has sole or principal responsibility under an agreement for carrying out all or part of the project; (3) it is one of a number of companies which together carry out the project; (4) it has the purpose of supplying finance to enable the project to be carried out; or (5) it is the holding company of a company within any of heads (1) to (4) supra: *ibid* Sch 2A para 7(1) (Sch 2A added by the Enterprise Act 2002 s 250(2), Sch 18). But a company is not a 'project company' of a project if it performs a function within heads (1) to (4) supra or is within head (5) supra, but it also performs a function which is not within heads (1) to (4) supra or related to a function within heads (1) to (4) supra or related to the project: Insolvency Act 1986 Sch 2A para 7(2) (as so added). For these purposes, a company carries out all or part of a project whether or not it acts wholly or partly through agents: Sch 2A para 7(3) (as so added).

3 *Ibid* s 72C(1) (s 72C added by the Enterprise Act 2002 s 250(1)). For these purposes, a project has 'step-in rights' if a person who provides finance in connection with the project has a conditional entitlement under an agreement to assume sole or principal responsibility under an agreement for carrying out all or part of the project or make arrangements for carrying out all or part of the project: Insolvency Act 1986 Sch 2A para 6(1) (as added: see note 2 supra). For these purposes, a reference to the provision of finance includes a reference to the provision of an indemnity: Sch 2A para 6(2) (as so added).

4 For these purposes, 'resources' includes funds, including payment for the provision of services or facilities, assets, professional skill, the grant of a concession or franchise and any other commercial resource: *ibid* Sch 2A para 8 (as added: see note 2 supra).

5 For these purposes, 'public body' means a body which exercises public functions, a body specified for these purposes by the Secretary of State, and a body within a class specified for these purposes by the Secretary of State: *ibid* Sch 2A para 9(1) (as added: see note 2 supra). A specification for these purposes may be general or for the purpose of the application of s 72C (as added) to a specified case: Sch 2A para 9(2) (as so added). As to the Secretary of State see para 11 note 10 ante.

6 *Ibid* s 72C(2) (as added: see note 3 supra).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

384 Exception to prohibition on appointment of administrative receiver in respect of public-private partnerships

NOTE 2--The term 'project' is not to be interpreted restrictively: *Feetum v Levy* [2005] EWCA Civ 1601, [2006] Ch 585.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/385. Exception to prohibition on appointment of administrative receiver in respect of utilities.

385. Exception to prohibition on appointment of administrative receiver in respect of utilities.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a project company² of a project which is a utility project and includes step-in rights³. For these purposes, 'utility project' means a project designed wholly or mainly for the purpose of a regulated business⁴.

1 Pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 As to the meaning of 'project company' see para 384 note 2 ante.

3 Insolvency Act 1986 s 72D(1) (s 72D added by the Enterprise Act 2002 s 250(1)). As to the meaning of 'step-in rights' see para 384 note 3 ante.

4 Insolvency Act 1986 s 72D(2)(a) (as added: see note 3 supra). 'Regulated business' means a business of a kind listed in the Insolvency Act 1986 Sch 2A para 10 (as added and amended): s 72D(2)(b) (as so added). For these purposes, a business is regulated if it is carried on: (1) in reliance on a licence under the Gas Act 1986 s 7 (as substituted and amended) or s 7A (as added and amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 805 et seq); (2) in reliance on a licence granted by virtue of s 41C (as added) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 819); (3) in reliance on a licence under the Electricity Act 1989 s 6 (as substituted) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1065); (4) by a water undertaker; (5) by a sewerage undertaker; (6) by a universal service provider within the meaning given by the Postal Services Act 2000 s 4(3), (4) (see POST OFFICE); (7) by the Post Office company within the meaning given by s 62 (see POST OFFICE); (8) by a relevant subsidiary of the Post Office company within the meaning given by s 63 (see POST OFFICE); (9) in reliance on a licence under the Railways Act 1993 s 8 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 83); (10) in reliance on a licence exemption under s 7 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 92), but this does not apply to the operator of a railway asset on a railway unless on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour; (11) by an operator of a system of transport which is deemed to be a railway for the purposes of Pt I (ss 2-83) (as amended) by virtue of s 81(2) (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES); or (12) by the operator of a vehicle carried on flanged wheels along a system within head (11) supra: Insolvency Act 1986 Sch 2A para 10(1), (2) (Sch 2A added by the Enterprise Act 2002 s 250(2), Sch 18; and the Insolvency Act 1986 Sch 2A para 10(1) amended by the Communications Act 2003 s 406(7), Sch 19(1)). For these purposes, a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service: Insolvency Act 1986 Sch 2A para 10(2A) (Sch 2A as so added; and Sch 2A para 10(2A) added by the Communications Act 2003 s 406(1), Sch 17 para 82).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

385 Exception to prohibition on appointment of administrative receiver in respect of utilities

NOTE 4--Also, head (14) in reliance on a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing EC Council Directive 1995/18, or pursuant to any action taken by an EEA state (ie a member state, Norway, Iceland or Liechtenstein) for that purpose: 1986 Act Sch 2A para 10(1) (amended by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/386. Exception to prohibition on appointment of administrative receiver in respect of urban regeneration projects.

386. Exception to prohibition on appointment of administrative receiver in respect of urban regeneration projects.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a project company² of a project which is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area³ outside Northern Ireland and includes step-in rights⁴. For these purposes, 'develop' means to carry out: (1) building operations⁵; any operation for the removal of substances⁶ or waste⁷ from land and the levelling of the surface of the land⁸; or (3) engineering operations⁹ in connection with these activities¹⁰.

1 Ie pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 As to the meaning of 'project company' see para 384 note 2 ante.

3 'Designated disadvantaged area' means an area designated as a disadvantaged area under the Finance Act 2001 s 92 (as amended): Insolvency Act 1986 s 72DA(3) (s 72DA added by the Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc) Order 2003, SI 2003/1832, art 2(b)).

4 Insolvency Act 1986 s 72DA(1) (as added: see note 3 supra). As to the meaning of 'step-in rights' see para 384 note 3 ante.

5 Ibid s 72DA(2)(a) (as added: see note 3 supra). 'Building operations' includes demolition of buildings, filling in of trenches, rebuilding, structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder: s 72DA(3) (as so added). 'Building' includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building: s 72DA(3) (as so added).

6 'Substance' means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour: ibid s 72DA(3) (as added: see note 3 supra).

7 'Waste' includes any waste materials, spoil, refuse or other matter deposited on land: ibid s 72DA(3) (as added: see note 3 supra).

8 Ibid s 72DA(2)(b) (as added: see note 3 supra).

9 'Engineering operations' includes the formation and laying out of means of access to highways: ibid s 72DA(3) (as added: see note 3 supra).

10 Ibid s 72DA(2)(c) (as added: see note 3 supra).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/387. Exception to prohibition on appointment of administrative receiver in respect of project finance.

387. Exception to prohibition on appointment of administrative receiver in respect of project finance.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a project company² of a project which is a financed project and includes step-in rights³. For these purposes, a project is 'financed' if under an agreement relating to it a project company incurs or, when the agreement is entered into, is expected to incur, a debt of at least £50 million⁴ for the purposes of carrying out the project⁵.

1 le pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 As to the meaning of 'project company' see para 384 note 2 ante.

3 Insolvency Act 1986 s 72E(1) (s 72E added by the Enterprise Act 2002 s 250(1)). As to the meaning of 'step-in rights' see para 384 note 3 ante.

4 The debt of at least £50 million may be incurred at any time during the life of the financed project and may be expressed wholly or partly in foreign currency, in which case the sterling equivalent must be calculated as at the time when the project begins: Insolvency Act 1986 Sch 2A para 5 (added by the Enterprise Act 2002 s 250(2), Sch 18).

5 Insolvency Act 1986 s 72E(2)(a) (as added: see note 3 supra).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/388. Exception to prohibition on appointment of administrative receiver in respect of financial markets.

388. Exception to prohibition on appointment of administrative receiver in respect of financial markets.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a company by virtue of a market charge², a system-charge³ or a collateral security charge⁴.

1 Ie pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 Ie within the meaning of the Companies Act 1989 s 173 (as amended): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 527.

3 Ie within the meaning of the Financial Markets and Insolvency Regulations 1996, SI 1996/1469 (as amended): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 509.

4 Insolvency Act 1986 s 72F (added by the Enterprise Act 2002 s 250(1)). As to the meaning of 'collateral security charge' see the Financial Markets and Insolvency Regulations 1996, SI 1996/1469 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 509.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/389. Exception to prohibition on appointment of administrative receiver in respect of registered social landlord.

389. Exception to prohibition on appointment of administrative receiver in respect of registered social landlord.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a company which is registered² as a social landlord³.

1 Ie pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

2 Ie under the Housing Act 1996 Pt I (as amended) (see HOUSING vol 22 (2006 Reissue) para 66 et seq) or under the Housing (Scotland) Act 2001 Pt 3 (as amended).

3 Insolvency Act 1986 s 72G (added by the Enterprise Act 2002 s 250(1)). As to social landlords see HOUSING vol 22 (2006 Reissue) para 66 et seq.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (2) PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER/390. Exception to prohibition on appointment of administrative receiver in relation to protected railway companies etc.

390. Exception to prohibition on appointment of administrative receiver in relation to protected railway companies etc.

The prohibition on appointment of an administrative receiver¹ does not prevent the appointment of an administrative receiver of a company holding an appointment under the Water Industry Act 1991², of a protected railway company³, or of a licence company⁴.

¹ ie pursuant to the Insolvency Act 1986 s 72A (as added and amended): see para 382 ante. For the meaning of 'administrative receiver' see para 382 note 3 ante; and COMPANIES vol 15 (2009) PARA 1337.

² ie under the Water Industry Act 1991 Pt II Ch 1 (ss 6-17) (as amended): see WATER AND WATERWAYS vol 100 (2009) PARA 137.

³ ie within the meaning of Railways Act 1993 s 59 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 187), including that provision as it has effect by virtue of the Channel Tunnel Rail Link Act 1996 s 19 (amended by the Transport Act 2000 s 215, Sch 16 para 56).

⁴ Insolvency Act 1986 s 72GA (added by the Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc) Order 2003, SI 2003/1832, art 2(c)). As to the meaning of 'licence company' see the Transport Act 2000 s 26; and AIR LAW vol 2 (2008) PARA 157.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

390 Exception to prohibition on appointment of administrative receiver in relation to protected railway companies etc

NOTE 3--Channel Tunnel Rail Link Act 1996 s 19 repealed in part: Railways Act 2005 Sch 13 Pt 1.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(3) APPOINTMENT AND STATUS/391. Appointment of administrative receiver.

(3) APPOINTMENT AND STATUS

391. Appointment of administrative receiver.

Where an administrative receiver¹ is appointed, he must confirm acceptance of his appointment². If an appointment of any person to the office of administrative receiver relates to more than one person, or has the effect that the office is to be held by more than one person, the appointment must declare whether any act required or authorised under any enactment to be done by the administrative receiver is to be done by all or any one or more of the persons for the time being holding that office³.

A body corporate is not qualified for appointment as receiver of a company⁴, nor may an undischarged bankrupt or a person in respect of whom a bankruptcy restrictions order is in force be so appointed⁵.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 See the Insolvency Rules 1986, SI 1986/1925, r 3.1 (substituted by SI 1987/1919); and para 394 post.

3 Insolvency Act 1986 s 231(1), (2) (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 20, Sch 26).

4 See the Insolvency Act 1986 s 30; and COMPANIES vol 15 (2009) PARA 1345.

5 See *ibid* s 31 (substituted by the Enterprise Act 2002 s 257(3), Sch 21 para 1); and COMPANIES vol 15 (2009) PARA 1346.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

391 Appointment of administrative receiver

TEXT AND NOTE 5--A person who is the subject of a moratorium period under a debt relief order or a debt relief restrictions order is not qualified for appointment as receiver of a company: see Insolvency Act 1986 s 31(1) (amended by the Tribunals, Courts and Enforcement Act 2007 Sch 20 para 2).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(3) APPOINTMENT AND STATUS/392. Administrative receiver to be an insolvency practitioner.

392. Administrative receiver to be an insolvency practitioner.

A person who acts as administrative receiver must be qualified to act as an insolvency practitioner in relation to a company¹.

¹ Insolvency Act 1986 s 388(1)(a). For these purposes, 'administrative receiver' has the meaning given by s 251 (see COMPANIES vol 15 (2009) PARA 1337): s 388(4). For the meaning of 'company' see para 8 note 1 ante. As to insolvency practitioners and their qualification see para 8 et seq ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(3) APPOINTMENT AND STATUS/393. Validity of administrative receiver's acts.

393. Validity of administrative receiver's acts.

The acts of an individual as administrative receiver of a company are valid notwithstanding any defect in his appointment, nomination or qualifications¹.

¹ Insolvency Act 1986 s 232 (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 21, Sch 26). See also para 159 ante. The defects in question are limited to defects in the form or procedure for the appointment; and the Insolvency Act 1986 s 232 (as amended) does not protect acts done where there was no power to appoint at all and the appointment is invalid: see s 34; and COMPANIES vol 15 (2009) PARA 1341. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(3) APPOINTMENT AND STATUS/394. Acceptance and confirmation of acceptance of appointment.

394. Acceptance and confirmation of acceptance of appointment.

Where two or more persons are appointed as joint receivers or managers of a company's property under powers contained in an instrument¹, the acceptance of such an appointment must be made by each of them in accordance with the statutory provisions² as if that person were a sole appointee; but the joint appointment takes effect only when all such persons have so accepted and is then deemed to have been made at the time at which the instrument of appointment was received by or on behalf of all such persons³. Where a person is appointed as the sole or joint receiver of a company's property under powers contained in an instrument, the appointee must, if he accepts the appointment, within seven days confirm his acceptance in writing to the person appointing him⁴. Any acceptance or confirmation of acceptance of appointment as a receiver or manager of a company's property⁵ may be given by any person, including, in the case of a joint appointment, any joint appointee, duly authorised for that purpose on behalf of the receiver or manager⁶. In confirming acceptance, the appointee or person authorised for that purpose must state the time and date of receipt of the instrument of appointment and the time and date of acceptance⁷.

1 For the meaning of 'contained in an instrument' see COMPANIES vol 15 (2009) PARA 1336.

2 I.e. the Insolvency Act 1986 s 33: see COMPANIES vol 15 (2009) PARA 1340.

3 Insolvency Rules 1986, SI 1986/1925, r 3.1(1) (r 3.1 substituted by SI 1987/1919).

4 Insolvency Rules 1986, SI 1986/1925, r 3.1(2) (as substituted: see note 3 supra). Rule 3.1(2) (as substituted) does not apply where an appointment is accepted in writing: r 3.1(3) (as so substituted). For the prescribed form of acceptance of appointment see r 3.1 (as substituted), r 12.7, Sch 4 Form 3.1 (added by SI 1987/1919).

5 I.e. under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

6 Ibid r 3.1(4) (as substituted: see note 3 supra).

7 Ibid r 3.1(5) (as substituted: see note 3 supra).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/395. Notice and advertisement of appointment.

(4) DUTIES, POWERS AND LIABILITY

395. Notice and advertisement of appointment.

Where an administrative receiver¹ of a company is appointed, he must:

- 785 (1) forthwith send to the company and publish in the prescribed manner a notice of his appointment; and
- 786 (2) within 28 days after his appointment, unless the court² otherwise directs, send such a notice to all the creditors of the company, so far as he is aware of their addresses³.

The following matters must be stated in the notices sent to the company and the creditors:

- 787 (a) the registered name of the company, as at the date of the appointment, and its registered number;
- 788 (b) any other name with which the company has been registered in the 12 months preceding that date;
- 789 (c) any name under which the company has traded at any time in those 12 months, if substantially different from its then registered name;
- 790 (d) the name and address of the administrative receiver, and the date of his appointment;
- 791 (e) the name of the person by whom the appointment was made;
- 792 (f) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;
- 793 (g) a brief description of the assets of the company, if any, in respect of which the person appointed is not made the receiver⁴.

The administrative receiver must also cause notice of his appointment to be advertised once in the Gazette⁵, and once in such newspaper as he thinks most appropriate for securing that it comes to the notice of the company's creditors⁶; and such notice must contain all the matters specified in heads (a) to (e) above⁷.

If the administrative receiver fails without reasonable excuse to comply with these provisions, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁸.

¹ For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

² For the meaning of 'the court' see para 4 ante. As to the mode of application and the procedure see para 1055 et seq post.

³ Insolvency Act 1986 s 46(1). The provisions of s 46 do not, however, apply in relation to the appointment of an administrative receiver to act with an existing administrative receiver or in place of an administrative receiver dying or ceasing to act, except that, where such provisions apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in s 46 to the administrative

receiver include his successor and any continuing administrative receiver: s 46(2). If, however, the company is being wound up, the provisions of s 46 apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modification arising from that fact: s 46(3).

4 Insolvency Rules 1986, SI 1986/1925, r 3.2(1), (2) (r 3.2(2) amended by SI 1987/1919).

5 For the meaning of 'the Gazette' see para 1048 note 1 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 3.2(1), (3). For the prescribed form of notice of appointment see r 3.2 (as amended: see note 4 supra), r 12.7, Sch 4 Form 3.1A (added by SI 1987/1919).

7 Insolvency Rules 1986, SI 1986/1925, r 3.2(1), (4).

8 Insolvency Act 1986 ss 46(4), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

395 Notice and advertisement of appointment

TEXT AND NOTES 5-7--SI 1986/1925 r 3.2(3), (4) substituted: SI 2009/642. SI 1986/1925 r 3.2(4) further substituted: SI 2010/686.

NOTE 6--SI 1986/1925 Sch 4 Form 3.1A substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/396. General powers.

396. General powers.

The powers conferred on the administrative receiver¹ of a company by the debentures by virtue of which he was appointed are deemed to include, except in so far as they are inconsistent with any of the provisions of those debentures, the powers specified² in the Insolvency Act 1986³. A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers⁴. An administrative receiver does not owe a general duty of care to the company but he does owe a duty to act in good faith for the purpose of preserving and realising the assets comprised in the security over which he is appointed⁵. An administrative receiver in possession of charged property or carrying on a business does owe a duty to manage the property or carry on the business with due diligence⁶. The following propositions set out the duties of receivers, including administrative receivers:

- 794 (1) a receiver managing mortgaged property owes duties to the mortgagor and anyone else with an interest in the equity of redemption;
- 795 (2) the duties include, but are not necessarily confined to, a duty of good faith;
- 796 (3) the extent and scope of any duty additional to that of good faith will depend on the facts and circumstances of the particular case;
- 797 (4) in exercising his powers of management, the primary duty of the receiver is to try and bring about a situation in which interest on the secured debt can be paid and the debt itself repaid;
- 798 (5) subject to that primary duty, the receiver owes a duty to manage the property with due diligence;
- 799 (6) due diligence does not oblige the receiver to continue to carry on a business on the mortgaged premises formerly carried on by the mortgagor;
- 800 (7) if the receiver does carry on a business on the mortgaged premises, due diligence requires reasonable steps to be taken in order to do so profitably⁷.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 As specified in the Insolvency Act 1986 s 42(1), Sch 1 (as amended). Such powers conferred on an administrative receiver are in like form to those conferred on an administrator: see para 163 heads (1)-(23) ante. In the application of Sch 1 (as amended) to an administrative receiver of a company: (1) the words 'he' and 'him' refer to the administrative receiver; and (2) references to the property of the company are references to the property of which he is, or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager: s 42(2). For the meaning of 'property' for these purposes see COMPANIES vol 15 (2009) PARA 1337.

3 Ibid s 42(1). See also *Rottenberg v Monjack* [1993] BCLC 374, [1992] BCC 688 (administrative receivers' powers of realisation restrained pending determination of the receivers' remuneration where sufficient assets were realised to pay debenture holders).

4 Insolvency Act 1986 s 42(3).

5 *Downsview Nominees Ltd v First City Corp'n Ltd* [1993] AC 295, [1993] 3 All ER 626, PC; *Knight v Lawrence* [1993] BCLC 215, [1991] BCC 411; *Palk v Mortgage Services Funding plc* [1993] Ch 330, [1993] 2 All ER 481, CA; *Yorkshire Bank plc v Hall* [1999] 1 All ER 879, [1999] 1 WLR 1713, CA; *Silven Properties Ltd v Royal Bank of Scotland plc* [2003] EWCA Civ 1409, [2004] 1 WLR 997, [2004] 1 BCLC 359.

6 *Medforth v Blake* [2000] Ch 86, [1999] 3 All ER 97, CA.

7 *Medforth v Blake* [2000] Ch 86, [1999] 3 All ER 97, CA.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/397. Duty to give notice of appointment, to make returns, and to pay preferential debts.

397. Duty to give notice of appointment, to make returns, and to pay preferential debts.

The statutory provisions relating to notification that a receiver and manager has been appointed¹, the enforcement of the receiver's duty to make returns², and the duty to pay preferential debts out of assets subject to a floating charge³ which apply to a receiver appointed out of court apply also where an administrative receiver has been appointed⁴.

1 Ie the Insolvency Act 1986 s 39: see COMPANIES vol 15 (2009) PARA 1344.

2 Ie ibid s 41: see COMPANIES vol 15 (2009) PARA 1353.

3 Ie ibid s 40: see COMPANIES vol 15 (2009) PARA 1334. This duty does not apply to receivers of industrial and provident societies which are not 'companies' for the purposes of s 40: *Re Devon and Somerset Farmers Ltd* [1994] Ch 57, [1994] 1 All ER 717. See also *Re New Bullas Trading Ltd* [1994] 1 BCLC 485, [1994] BCC 36, CA (a charge which, as created, was a fixed charge but which has since become a floating charge is not subject to the Insolvency Act 1986 s 40); *Re Pearl Maintenance Services Ltd, Re Pearl Building Contracts Ltd* [1995] 1 BCLC 449, [1995] BCC 657 (receivers' duty under the Insolvency Act 1986 s 40 held to continue after the debenture holder had been satisfied); *Re H & K Medway Ltd* [1997] 2 All ER 321, [1997] 1 WLR 1422 (the expression 'the debentures' in the Insolvency Act 1986 s 40(2) is a reference to 'any debentures of the company secured by a charge which, as created, was a floating charge' in s 40(1), and not merely to debentures under which a receiver has been appointed). As to the meaning of 'floating charge' see COMPANIES vol 15 (2009) PARA 1269.

4 See the Insolvency Act 1986 ss 39-41; and COMPANIES vol 15 (2009) PARAS 1334, 1344, 1353. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/398. Power to deal with charged property.

398. Power to deal with charged property.

Where, on application by the administrative receiver¹, the court is satisfied that the disposal, with or without other assets, of any relevant property² which is subject to a security³ other than an excepted security⁴ would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security⁵. It must be a condition of any such order that:

- 801 (1) the net proceeds of the disposal; and
- 802 (2) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

are to be applied towards discharging the sums secured by the security⁶.

Where a condition so imposed relates to two or more securities, that condition must require the net proceeds of the disposal and, where head (2) above applies, the sums there mentioned, to be applied towards discharging the sums secured by those securities in the order of their priorities⁷.

Where the administrative receiver makes such an application⁸, the court must fix a venue⁹ for the hearing of the application; and the receiver must forthwith give notice of the venue to the person who is the holder of the security¹⁰.

If an order under these provisions is made by the court, the receiver must forthwith give notice of it to the person who is the holder of the security¹¹; and an office copy of the order must, within 14 days of the making of the order, be sent by the administrative receiver to the registrar of companies¹². If without reasonable excuse the administrative receiver fails to comply with that obligation¹³, he is liable, on summary conviction, to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum¹⁴.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 For these purposes, 'relevant property', in relation to the administrative receiver, means the property of which he is, or but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager: Insolvency Act 1986 s 43(7).

3 For the meaning of 'security' see para 109 note 10 ante.

4 The excepted securities are: (1) any security held by the person by or on whose behalf the administrative receiver was appointed; and (2) any security to which a security falling within head (1) supra has priority: Insolvency Act 1986 s 43(2).

5 Ibid s 43(1).

6 Ibid s 43(3).

7 Ibid s 43(4).

- 8 As to the mode of application and the procedure see para 1055 et seq post.
- 9 For the meaning of 'venue' see para 91 note 7 ante.
- 10 Insolvency Rules 1986, SI 1986/1925, r 3.31(1), (2).
- 11 Ibid r 3.31(1), (3). The court must send two sealed copies of the order to the receiver, who must send one of them to the holder of the security: r 3.31(1), (4).
- 12 Insolvency Act 1986 s 43(5). For the prescribed form of notice to the registrar of companies of the order to dispose of charged property see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 3.8. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.
- 13 Ie the obligation contained in the Insolvency Act 1986 s 43(5): see the text and note 12 supra.
- 14 Ibid ss 43(6), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

398 Power to deal with charged property

TEXT AND NOTES 11, 12--Insolvency Act 1986 s 43(5) amended: SI 2009/1941. SI 1986/1925 r 3.31(3), (4) substituted: SI 2010/686.

NOTE 12--SI 1986/1925 Sch 4 Form 3.8 amended: SI 2009/2472.

NOTE 14--Insolvency Act 1986 Sch 10 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/399. Power to ensure continuation of essential supplies by utilities.

399. Power to ensure continuation of essential supplies by utilities.

The administrative receiver has the like powers as a supervisor of a voluntary arrangement¹ to ensure continuation of supplies of gas, water, electricity and telecommunication services².

¹ See under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337. For the meaning of 'supervisor' see para 1170 post.

² See *ibid* s 233 (as amended); and para 140 ante.

UPDATE

380-431 Administrative Receivers

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/400. Powers to get in company's property and obtain information.

400. Powers to get in company's property and obtain information.

The provisions dealing with the getting in of the company's property¹, the duty of certain persons to co-operate in giving information relating to the company's affairs², and the powers of the court to summon persons before it to give information about the company's affairs³, which apply where the company has gone into liquidation apply also where an administrative receiver has been appointed⁴.

1 See the Insolvency Act 1986 s 234 (as amended); and para 675 post.

2 See *ibid* s 235 (as amended); and para 678 post.

3 See *ibid* ss 236, 237; and paras 679-686 post.

4 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/401. Disqualification of directors; duty to report.

401. Disqualification of directors; duty to report.

Where it appears to the administrative receiver that the conditions imposing a duty on the court to disqualify unfit directors of insolvent companies are satisfied¹, the administrative receiver is under a duty to report the matter to the Secretary of State².

The Secretary of State or the official receiver may require the administrative receiver to furnish him with such information with respect to any person's conduct as a director of the company, and to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director, as the Secretary of State or the official receiver may reasonably require³.

1 Ie the conditions contained in the Company Directors Disqualification Act 1986 s 6(1): see para 1121 post. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 Ibid s 7(3)(d). As to the duty to report see para 1125 post. As to the Secretary of State see para 11 note 10 ante.

3 See ibid s 7(4); and para 1127 post.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(4) DUTIES, POWERS AND LIABILITY/402. Administrative receiver's agency and liability for contracts.

402. Administrative receiver's agency and liability for contracts.

The administrative receiver¹ of a company:

- 803 (1) is deemed to be the company's agent, unless and until the company goes into liquidation²;
- 804 (2) is personally liable on any contract entered into by him in the carrying out of his functions, except in so far as the contract otherwise provides, and, to the extent of any qualifying liability³, on any contract of employment adopted⁴ by him on or after 15 March 1994⁵ in the carrying out of those functions; and
- 805 (3) is entitled in respect of that liability to an indemnity out of the assets of the company⁶.

Where a sum payable in respect of a liability which is a qualifying liability for the purposes of head (2) above is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under head (2) above only extends to so much of the sum as is payable in respect of services rendered after the adoption of the contract⁷. For these purposes:

- 806 (a) wages or salary payable in respect of a period of holiday⁸ or absence from work through sickness or other good cause are deemed to be wages or, as the case may be, salary in respect of services rendered in that period; and
- 807 (b) a sum payable in lieu of holiday is deemed to be wages or, as the case may be, salary in respect of services rendered in the period by reference to which the holiday entitlement arose⁹.

The provisions described above do not limit any right to indemnity which the administrative receiver would have apart from them, nor do they limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability¹⁰.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 For the meaning of 'go into liquidation' see para 9 note 3 ante.

3 For these purposes, a liability under a contract of employment is a qualifying liability if: (1) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme; (2) it is incurred while the administrative receiver is in office; and (3) it is in respect of services rendered wholly or partly after the adoption of the contract: Insolvency Act 1986 s 44(2A) (added by the Insolvency Act 1994 s 2(1), (3)).

4 The administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment: Insolvency Act 1986 s 44(2).

5 As to contracts of employment adopted by an administrative receiver before 15 March 1994 see *Powdrill v Watson* [1995] 2 AC 394, [1995] 2 All ER 65, HL (on the true construction of the Insolvency Act 1986 s 44 (as originally enacted), the word 'adopt' connoted some conduct by the receiver which amounted to an election to treat the continued contract of employment with the company as giving rise to a separate liability in the receivership; adoption of the contract involved the acceptance or rejection of the contract as a whole and it was not open to the receiver to pick and choose between different liabilities under the contract or to treat only certain liabilities under the contract as liabilities in the receivership; it followed that, if the receiver caused the

company to continue the employment of an employee for more than 14 days after his appointment, the employee's contract of employment was inevitably adopted for the purposes of the Insolvency Act 1986 and it was not open to the receiver to avoid that result or alter its consequences unilaterally by informing the employees that he was not adopting their contracts or was only doing so on terms; but the consequence of the adoption of contracts of employment was to give priority only to liabilities incurred by the administrative receiver during his tenure of office).

6 Insolvency Act 1986 s 44(1) (amended by the Insolvency Act 1994 s 2(2)); Insolvency Act 1994 s 2(4).

7 Insolvency Act 1986 s 44(2B) (added by the Insolvency Act 1994 s 2(3)).

8 For these purposes, the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period: Insolvency Act 1986 s 44(2D) (added by the Insolvency Act 1994 s 2(3)).

9 Insolvency Act 1986 s 44(2C) (added by the Insolvency Act 1994 s 2(3)).

10 Insolvency Act 1986 s 44(3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/403. Requirement for statement of affairs to be submitted to administrative receiver.

(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS

403. Requirement for statement of affairs to be submitted to administrative receiver.

Where an administrative receiver¹ of a company is appointed, he must forthwith require some or all of the following persons to make out and submit to him a statement in the prescribed form² as to the affairs of the company:

- 808 (1) those who are or have been officers³ of the company;
- 809 (2) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;
- 810 (3) those who are in the company's employment⁴, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
- 811 (4) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company⁵.

If a person without reasonable excuse fails to comply with any obligation imposed on him under these provisions, he is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum, and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum⁶.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 For the prescribed form of statement see the Insolvency Rules 1986, SI 1986/1925, rr 3.4, 12.7, Sch 4 Form 3.2 (substituted by SI 2003/1730).

3 For the meaning of 'officer' see para 72 note 8 ante.

4 For these purposes, 'employment' includes employment under a contract for services: Insolvency Act 1986 s 47(3).

5 Ibid s 47(1), (3). As to the form of notice see para 404 post. Section 47 does not apply in relation to the appointment of an administrative receiver to act with an existing administrative receiver or in place of an administrative receiver dying or ceasing to act, except that, where s 47 applies to an administrative receiver who dies or ceases to act before the provisions of s 47 have been fully complied with, the references in s 47 to the administrative receiver include his successor and any continuing administrative receiver: s 46(2). If, however, the company is being wound up, s 47 applies notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact: s 46(3).

6 Ibid ss 47(6), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

403 Requirement for statement of affairs to be submitted to administrative receiver

NOTE 2--SI 1986/1925 Sch 4 Form 3.2 substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/404. Notice requiring statement of affairs.

404. Notice requiring statement of affairs.

Where the administrative receiver determines to require a statement of the company's affairs to be made out and submitted to him¹, he must send notice to each of the persons whom he considers should be made so responsible ('the deponents')² requiring them to prepare and submit the statement³.

The notice must inform each of the deponents:

- 812 (1) of the names and addresses of all others, if any, to whom the same notice has been sent;
- 813 (2) of the time within which the statement must be delivered;
- 814 (3) of the penalty for non-compliance⁴; and
- 815 (4) of the application to him and to each of the other deponents of the statutory duty⁵ to provide information and to attend on the administrative receiver, if required⁶.

The administrative receiver must, on request, furnish each deponent with the forms required for the preparation of the statement of affairs⁷.

1 Ie under the Insolvency Act 1986 s 47: see para 403 ante. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 The persons to whom the notice is sent are referred to in the Insolvency Rules 1986, SI 1986/1925, rr 3.3-3.8 (as amended) (see paras 405-409 post) as the 'deponents': r 3.3(2).

3 Ibid r 3.3(1) (amended by SI 1987/1919). For the prescribed form of notice to be sent by the administrative receiver see the Insolvency Rules 1986, SI 1986/1925, rr 3.3, 12.7, Sch 4 Form 3.1B (substituted by SI 1987/1919).

4 Ie under the Insolvency Act 1986 s 47(6): see para 403 ante.

5 Ie under ibid s 235 (as amended): see para 678 post.

6 Insolvency Rules 1986, SI 1986/1925, r 3.3(3).

7 Ibid r 3.3(4) (amended by SI 1987/1919).

UPDATE

380-431 Administrative Receivers

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/405. Form of statement of affairs; verification and filing.

405. Form of statement of affairs; verification and filing.

The statement of affairs¹ must be verified by affidavit² by the persons required to submit it and must show:

- 816 (1) particulars of the company's assets, debts and liabilities;
- 817 (2) the names and addresses of its creditors;
- 818 (3) the securities held by them respectively;
- 819 (4) the dates when the securities were respectively given; and
- 820 (5) such further or other information as may be prescribed³.

The statement must be in the prescribed form⁴, must contain all the particulars required by that form and must be verified by affidavit by the deponents⁵, using the same form⁶.

The administrative receiver may require any of the persons who may be required to prepare and submit to him a statement of affairs⁷ to submit an affidavit of concurrence⁸, stating that he concurs in the statement of affairs⁹. An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it¹⁰. The statement of affairs must be delivered to the receiver by the deponent making the affidavit of verification, or by one of them, if more than one, together with a copy of the verified statement¹¹. Every affidavit of concurrence must be delivered by the person who makes it, together with a copy¹². The administrative receiver must retain the verified copy of the statement and the affidavits of concurrence, if any, as part of the records of the receivership¹³.

1 See para 403 ante.

2 As to the use of witness statements instead of affidavits in insolvency proceedings see the Insolvency Rules 1986, SI 1986/1925, r 7.57(5), (6) (as substituted and amended); and para 1076 post.

3 Insolvency Act 1986 s 47(2). As to the application of s 47 where an administrative receiver is appointed with an existing administrative receiver or in place of an administrative receiver dying or ceasing to act see para 403 note 5 ante. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

4 For the prescribed form of statement see the Insolvency Rules 1986, SI 1986/1925, rr 3.4, 12.7, Sch 4 Form 3.2 (substituted by SI 2003/1730).

5 For the meaning of 'deponents' see para 404 note 2 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 3.4(1).

7 ie any of the persons mentioned in the Insolvency Act 1986 s 47(3): see para 403 heads (1)-(4) ante.

8 As to the use of witness statements instead of affidavits in insolvency proceedings see the Insolvency Rules 1986, SI 1986/1925, r 7.57(5), (6) (as substituted and amended); and para 1076 post.

9 Ibid r 3.4(2).

10 Ibid r 3.4(3).

11 Ibid r 3.4(4).

12 Ibid r 3.4(5).

13 Ibid r 3.4(6).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

405 Form of statement of affairs; verification and filing

NOTE 4--SI 1986/1925 Sch 4 Form 3.2 substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/406. Limited disclosure.

406. Limited disclosure.

Where the administrative receiver¹ thinks that it would prejudice the conduct of the receivership for the whole or part of the statement of affairs² to be disclosed, he may apply³ to the court for an order of limited disclosure in respect of the statement or a specified part of it⁴. The court may then order that the statement or, as the case may be, a specified part of it, be not open to inspection otherwise than with the leave of the court⁵. The court's order may include directions as to the delivery of documents to the registrar of companies and the disclosure of relevant information to other persons⁶.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 See para 403 ante.

3 As to the mode of application and the procedure see para 1055 et seq post.

4 Insolvency Rules 1986, SI 1986/1925, r 3.5(1).

5 Ibid r 3.5(2).

6 Ibid r 3.5(3). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

UPDATE

380-431 Administrative Receivers

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/407. Release from duty to submit statement of affairs; extension of time.

407. Release from duty to submit statement of affairs; extension of time.

Where any persons are required to submit a statement of affairs to the administrative receiver¹, they must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver². However, the administrative receiver may, if he thinks fit, at any time release a person from any obligation imposed on him³ or, either when giving the notice requiring submission of the statement⁴ or subsequently, extend the period for compliance; and, where the administrative receiver has refused to exercise such power, the court may, if it thinks fit, exercise it⁵. If a person without reasonable excuse fails to comply with any obligation imposed on him under these provisions, he is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum, and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum⁶.

The administrative receiver's power to give a release or to grant an extension of time⁷ may be exercised at the receiver's own discretion or at the request of any deponent⁸. A deponent may, if he requests a release or extension of time and it is refused by the receiver, apply to the court for it⁹. The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but the court must not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice¹⁰. If the application is not dismissed, the court must fix a venue¹¹ for it to be heard and give notice to the deponent accordingly¹². The deponent must, at least 14 days before the hearing, send to the receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he, the deponent, intends to adduce in support of it¹³.

The receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention; and, if such a report is filed, a copy of it must be sent by the receiver to the deponent, not later than five days before the hearing¹⁴. Sealed copies of any order made on the application must be sent by the court to the deponent and the receiver¹⁵.

On any such application the applicant's costs must be paid in any event by him and, unless the court otherwise orders, no allowance towards them may be made out of the assets under the administrative receiver's control¹⁶.

¹ *Ie* under the Insolvency Act 1986 s 47: see para 403 ante. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

² *Ibid* s 47(4). Section 47(4) is subject to the provisions of s 47(5) (see the text to note 5 *infra*): s 47(4).

³ *Ie* by *ibid* s 47(1) (see para 403 ante) or s 47(2) (see para 405 ante).

⁴ *Ie* under *ibid* s 47(4): see the text to note 2 *supra*.

⁵ *Ibid* s 47(5).

⁶ *Ibid* ss 47(6), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

⁷ *Ie* under *ibid* s 47(5): see the text to note 5 *supra*.

- 8 Insolvency Rules 1986, SI 1986/1925, r 3.6(1). For the meaning of 'deponent' see para 404 note 2 ante.
- 9 Ibid r 3.6(2). As to the mode of application and the procedure see para 1055 et seq post.
- 10 Ibid r 3.6(3).
- 11 For the meaning of 'venue' see para 91 note 7 ante.
- 12 Insolvency Rules 1986, SI 1986/1925, r 3.6(3).
- 13 Ibid r 3.6(4).
- 14 Ibid r 3.6(5).
- 15 Ibid r 3.6(6).
- 16 Ibid r 3.6(7).

UPDATE

380-431 Administrative Receivers

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/408. Expenses of statement of affairs.

408. Expenses of statement of affairs.

A deponent¹ making the statement of affairs and affidavit² must be allowed, and paid by the administrative receiver³ out of his receipts, any expenses incurred by the deponent in so doing which the receiver thinks reasonable⁴. Any decision by the receiver under these provisions is subject to appeal to the court⁵. Nothing in these provisions, however, relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or the provision of information to the receiver⁶.

1 For the meaning of 'deponent' see para 404 note 2 ante.

2 See para 403 ante.

3 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

4 Insolvency Rules 1986, SI 1986/1925, r 3.7(1).

5 Ibid r 3.7(2). As to the mode of application and the procedure see para 1030 et seq post.

6 Ibid r 3.7(3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(5) STATEMENT OF AFFAIRS AND REPORT TO CREDITORS/409. Report to creditors.

409. Report to creditors.

Where an administrative receiver¹ is appointed, he must, within three months after his appointment or such longer period as the court² may allow, send to the registrar of companies³, to any trustees for secured creditors⁴ of the company and, so far as he is aware of their addresses, to all such creditors, a report⁵ as to the following matters:

- 821 (1) the events leading up to his appointment, so far as he is aware of them;
- 822 (2) the disposal or proposed disposal by him of any property⁶ of the company and the carrying on or proposed carrying on by him of any business⁷ of the company;
- 823 (3) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
- 824 (4) the amount, if any, likely to be available for the payment of other creditors⁸.

The administrative receiver must also, within three months after his appointment or such longer period as the court may allow, either:

- 825 (a) send a copy of the report, so far as he is aware of their addresses, to all unsecured creditors of the company; or
- 826 (b) publish in the prescribed manner a notice⁹ stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and in either case, unless the court otherwise directs, he must lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice¹⁰.

The court may not, however, give such a direction unless:

- 827 (i) the report states the intention of the administrative receiver to apply for the direction; and
- 828 (ii) a copy of the report is sent to all the unsecured creditors of the company so far as he is aware of their addresses, or a notice stating an address to which they may write for copies of the report has been so published in the prescribed manner not less than 14 days before the hearing of the application¹¹.

If the administrative receiver proposes to apply to the court to dispense with the holding of the meeting of unsecured creditors referred to above, he must in his report to creditors, or, as the case may be, in the notice published as mentioned above, state the venue¹² fixed by the court for the hearing of the application¹³.

Where the company has gone or goes into liquidation¹⁴, the administrative receiver must, within seven days after sending his report to the registrar of companies, any trustees for secured creditors and, so far as he is aware of their addresses, all such creditors¹⁵, or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator; and,

where he does so before the time for sending his report to the unsecured creditors or publishing the notice to unsecured creditors referred to above has expired¹⁶, he need not comply with those requirements¹⁷.

A report under these provisions must include a summary of the statement of affairs made out and submitted to him¹⁸, and of his comments, if any, upon it¹⁹. Nothing in these provisions is, however, to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions²⁰.

A report under these provisions must state, to the best of the receiver's knowledge and belief, an estimate of the value of the prescribed part²¹ of the company's property available for the satisfaction of unsecured debts²². This is the case whether or not the receiver proposes to make an application for an order that the provisions relating to the prescribed part should not apply²³ or whether the provisions relating to the prescribed part do not apply²⁴. The report must also state, to the best of the receiver's knowledge and belief, an estimate of the value of the company's net property²⁵. Nothing in these provisions is to be taken as requiring any such estimate to include any information the disclosure of which could seriously prejudice the commercial interests of the company²⁶. The report must also state whether, and if so why, the receiver proposes to make an application to the court for an order²⁷ that the provisions relating to the prescribed part should not apply²⁸.

If the administrative receiver without reasonable excuse fails to comply with these provisions, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum²⁹.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 Ie, if proceedings have not already been commenced in which the application may be made, the court having jurisdiction to wind up the company. As to the courts having winding-up jurisdiction see para 438 et seq post. For the meaning of 'the court' see para 4 ante. As to the mode of application and the procedure see para 1055 et seq post.

3 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 For the meaning of 'secured creditor' see para 109 note 10 ante.

5 Subject to any order of the court under the Insolvency Rules 1986, SI 1986/1925, r 3.5 (see para 406 ante), the copy of the receiver's report which under the Insolvency Act 1986 s 48(1) is to be sent to the registrar of companies must have attached to it a copy of any statement of affairs under s 47 (see para 403 ante) and copies of any affidavits of concurrence (see para 405 ante): Insolvency Rules 1986, SI 1986/1925, r 3.8(3). For the prescribed form of statement of affairs see rr 3.8, 12.7, Sch 4 Form 3.3.

If the statement of affairs or affidavits of concurrence, if any, have not been submitted to the receiver by the time he sends a copy of his report to the registrar of companies, he must send a copy of the statement and any affidavits of concurrence as soon thereafter as he receives them: r 3.8(4).

6 For the meaning of 'property' see COMPANIES vol 15 (2009) PARA 1337.

7 For the meaning of 'business' see para 156 note 1 ante.

8 Insolvency Act 1986 s 48(1). For the prescribed form of administrative receiver's report see the Insolvency Rules 1986 r 12.7, Sch 4 Form 3.10. The Insolvency Act 1986 s 46(2) (see para 395 note 3 ante) applies for the purposes of s 48: s 48(7).

9 If, under *ibid* s 48(2), the administrative receiver determines not to send a copy of his report to creditors, but to publish notice under s 48(2)(b) (see head (b) in the text), the notice must be published in the newspaper in which the receiver's appointment was advertised: Insolvency Rules 1986, SI 1986/1925, r 3.8(1).

10 Insolvency Act 1986 s 48(2).

11 *Ibid* s 48(3).

- 12 For the meaning of 'venue' see para 91 note 7 ante.
- 13 Insolvency Rules 1986, SI 1986/1925, r 3.8(2).
- 14 For the meaning of 'go into liquidation' see para 9 note 3 ante.
- 15 Ie in accordance with the Insolvency Act 1986 s 48(1): see the text and notes 1-8 supra.
- 16 Ie in accordance with ibid s 48(2): see the text and notes 9, 10 supra.
- 17 Ibid s 48(4).
- 18 Ie under ibid s 47: see para 403 ante. As to possible restrictions on disclosure of the statement of affairs see para 406 ante.
- 19 Ibid s 48(5).
- 20 Ibid s 48(6). See *Gomba Holdings UK Ltd v Homan* [1986] 3 All ER 94, [1986] 1 WLR 1301.
- 21 Ie under the Insolvency Act 1986 s 176A (as added): see para 773 post.
- 22 Insolvency Rules 1986, SI 1986/1925, r 3.8(5)(a) (r 3.8(5) added by SI 2003/1730).
- 23 Ie pursuant to the Insolvency Act 1986 s 176A(5) (as added): see para 773 post.
- 24 Ie pursuant to ibid s 176A(3) (as added): see para 773 post.
- 25 Insolvency Rules 1986, SI 1986/1925, r 3.8(5)(b) (as added: see note 22 supra).
- 26 Ibid r 3.8(6) (added by SI 2003/1730). If such information is excluded from the calculation, the estimate must be accompanied by a statement to that effect.
- 27 Ie pursuant to the Insolvency Act 1986 s 176A(5) (as added): see para 773 post.
- 28 Insolvency Rules 1986, SI 1986/1925, r 3.8(7) (added by SI 2003/1730).
- 29 Insolvency Act 1986 ss 48(8), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

409 Report to creditors

NOTE 9--SI 1986/1925 r 3.8(1) substituted: SI 2009/642. SI 1986/1925 r 3.8(1A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (6) MEETINGS OF CREDITORS/410. Procedure for summoning a meeting.

(6) MEETINGS OF CREDITORS

410. Procedure for summoning a meeting.

In fixing the venue¹ for a meeting of creditors², the administrative receiver³ must have regard to the convenience of the persons who are invited to attend⁴. The meeting must be summoned for commencement between 10.00 and 16.00 hours on a business day⁵, unless the court otherwise directs⁶. At least 14 days' notice of the venue must be given to all creditors of the company who are identified in the statement of affairs⁷, or are known to the receiver and had claims against the company at the date of his appointment⁸. Forms of proxy must be sent out with the notice summoning the meeting⁹. The notice must include a statement to the effect that creditors whose claims are wholly secured are not entitled to attend or be represented at the meeting¹⁰. Notice of the venue must also be published in the newspaper in which the receiver's appointment was advertised¹¹; and the notice to creditors and the newspaper advertisement must contain a statement of voting rights¹².

- 1 For the meaning of 'venue' see para 91 note 7 ante.
- 2 ie summoned under the Insolvency Act 1986 s 48(2): see para 409 ante.
- 3 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.
- 4 Insolvency Rules 1986, SI 1986/1925, r 3.9(1).
- 5 For the meaning of 'business day' see para 113 note 4 ante.
- 6 Insolvency Rules 1986, SI 1986/1925, r 3.9(2).
- 7 See para 403 ante.
- 8 Insolvency Rules 1986, SI 1986/1925, r 3.9(3).
- 9 Ibid r 3.9(4). For the prescribed form of proxy see rr 3.9, 12.7, Sch 4 Form 8.3.
- 10 Ibid r 3.9(5).
- 11 Ibid r 3.9(6).
- 12 Ibid r 3.9(7). As to voting rights see para 412 post.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

410 Procedure for summoning a meeting

TEXT AND NOTES 10-12--SI 1986/1925 r 3.9(7) amended: SI 2009/642. SI 1986/1925 r 3.9(6) substituted, r 3.9(6A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (6) MEETINGS OF CREDITORS/411. The chairman and quorum at meetings; adjournments.

411. The chairman and quorum at meetings; adjournments.

The chairman at the creditors' meeting¹ must be the receiver or a person nominated by him in writing to act in his place². A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company³ or an employee of the receiver or his firm who is experienced in insolvency matters⁴.

Any meeting of creditors in insolvency proceedings is competent to act if a quorum is present, that is to say, in the case of a creditors' meeting, at least one creditor entitled to vote⁵. Where at any meeting of creditors the requirement as to a quorum being present is satisfied by the attendance of the chairman alone or one other person in addition to the chairman, and the chairman is aware, by virtue of proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote, the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement⁶.

The creditors' meeting must not be adjourned, even if no quorum is present, unless the chairman decides that it is desirable; and in that case he must adjourn it to such a date, time and place as he thinks fit⁷. If there is no quorum and the meeting is not adjourned, it is deemed to have been duly summoned and held⁸.

1 See para 410 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 3.10(1).

3 As to insolvency practitioners and their qualification see para 8 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, r 3.10(2).

5 Ibid r 12.4A(1), (2)(a) (r 12.4A added by SI 1987/1919). For the purposes of the Insolvency Rules 1986, SI 1986/1925, r 12.4A (as added), the reference to the creditors necessary to constitute a quorum is a reference to those persons present or represented by proxy by any person, including the chairman, and including persons duly represented under the Companies Act 1985 s 375 (see COMPANIES vol 14 (2009) PARA 661): Insolvency Rules 1986, SI 1986/1925, r 12.4A(3) (as so added).

6 Ibid r 12.4A(4) (as added: see note 5 supra).

7 Ibid r 3.14(1). Rule 3.9(1), (2) (see para 410 ante) applies, with necessary modifications, to any adjourned meeting: r 3.14(2).

8 Ibid r 3.14(3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

411 The chairman and quorum at meetings; adjournments

NOTE 7--SI 1986/1925 r 3.14(2A) added: SI 2010/686.

NOTE 5--SI 1986/1925 r 12.4A(3) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (6) MEETINGS OF CREDITORS/412. Voting rights.

412. Voting rights.

At the creditors' meeting¹ a person is entitled to vote only if:

- 829 (1) he has given to the receiver, not later than 12.00 hours on the business day² before the day fixed for the meeting, details in writing of the debt that he claims to be due to him from the company, and the claim has been duly admitted³; and
- 830 (2) there has been lodged with the administrative receiver⁴ any proxy which the creditor intends to be used on his behalf⁵.

The chairman⁶ of the meeting may allow a creditor to vote notwithstanding that he failed to comply with head (1) above, if satisfied that the failure was due to circumstances beyond the creditor's control⁷. The receiver or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him where he thinks it necessary for the purpose of substantiating the whole or any part of the claim⁸.

Votes are calculated according to the amount of a creditor's debt as at the date of the appointment of the receiver, after deducting any amounts paid in respect of that debt after that date⁹. A creditor may not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose¹⁰. A secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security as estimated by him¹¹.

A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing:

- 831 (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made, or, in the case of a company, which has not gone into liquidation, as a security in his hands; and
- 832 (b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim¹².

1 See para 410 ante.

2 For the meaning of 'business day' see para 113 note 4 ante.

3 As to the admission of claims see para 413 post.

4 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

5 Insolvency Rules 1986, SI 1986/1925, r 3.11(1).

6 As to the chairman of the creditors' meeting see para 411 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 3.11(2).

8 Ibid r 3.11(3).

9 Ibid r 3.11(4).

10 Ibid r 3.11(5). See also para 124 ante.

11 Ibid r 3.11(6).

12 Ibid r 3.11(7).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

412 Voting rights

TEXT AND NOTES--See SI 1986/1925 r 3.11(1), (7) amended, rr 3.11(5A), 3.11A (contents of claim) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (6) MEETINGS OF CREDITORS/413. Admission and rejection of claims.

413. Admission and rejection of claims.

At the creditors' meeting¹ the chairman² has power to admit or reject a creditor's claim for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or any part of the claim³. The chairman's decision under this provision, or in respect of any matter arising in relation to voting rights⁴, is subject to appeal to the court by any creditor⁵. If the chairman is in doubt whether a claim should be admitted or rejected, he should mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained⁶. If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just⁷. Neither the receiver nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of any such appeal to the court, unless the court makes an order to that effect⁸.

1 See paras 124, 410 ante.

2 As to the chairman of the creditors' meeting see para 411 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 3.12(1).

4 *Ie* under *ibid* r 3.11: see para 412 ante.

5 *Ibid* r 3.12(2). As to the mode of application and the procedure see para 1030 *et seq post*.

6 *Ibid* r 3.12(3).

7 *Ibid* r 3.12(4).

8 *Ibid* r 3.12(5).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

413 Admission and rejection of claims

NOTE 7--SI 1986/1925 r 3.12(4A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (6) MEETINGS OF CREDITORS/414. Resolutions and minutes.

414. Resolutions and minutes.

At the creditors' meeting¹ a resolution is passed when a majority, in value, of those present and voting in person or by proxy have voted in favour of it². The chairman³ of the meeting must cause a record to be made of the proceedings, and kept as part of the records of the receivership⁴. The record must include a list of the creditors who attended, whether personally or by proxy, and, if a creditors' committee has been established⁵, the names and addresses of those elected to be members of the committee⁶.

1 See para 410 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 3.15(1).

3 As to the chairman at the creditors' meeting see para 411 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 3.15(2).

5 As to the creditors' committee see para 415 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 3.15(3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/415. Creditors' committee.

(7) CREDITORS' COMMITTEE

415. Creditors' committee.

Where a meeting of creditors is summoned¹, the meeting may, if it thinks fit, establish a committee ('the creditors' committee') to exercise the functions conferred on it by or under the Insolvency Act 1986². If such a committee is established, it may, on giving not less than seven days' notice, require the administrative receiver³ to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require⁴.

1 le under the Insolvency Act 1986 s 48: see para 409 ante.

2 Ibid s 49(1).

3 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

4 Insolvency Act 1986 s 49(2).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/416. Constitution of creditors' committee.

416. Constitution of creditors' committee.

Where it is resolved by the creditors' meeting¹ to establish a creditors' committee, the committee must consist of at least three and not more than five creditors of the company elected at the meeting². Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote³. A body corporate⁴ may be a member of the committee, but it cannot act as such otherwise than by a properly appointed⁵ representative⁶.

1 See para 415 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 3.16(1).

3 Ibid r 3.16(2). As to voting rights see para 412 ante.

4 For the meaning of 'body corporate' see para 5 note 13 ante.

5 He appointed under the Insolvency Rules 1986, SI 1986/1925, r 3.21 (as amended): see para 420 post.

6 Ibid r 3.16(3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

416 Constitution of creditors' committee

TEXT AND NOTE 3--SI 1986/1925 r 3.16(2) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/417. Formalities of establishment.

417. Formalities of establishment.

The creditors' committee does not come into being, and accordingly cannot act, until the administrative receiver¹ has issued a certificate of its due constitution².

No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by his proxy-holder or representative³ present at the meeting establishing the committee⁴.

The receiver's certificate of the committee's due constitution must not issue unless and until at least three of the persons who are to be members of the committee have agreed to act⁵. As and when the others, if any, agree to act, the receiver must issue an amended certificate⁶. The certificate, and any amended certificate, must be sent by the receiver to the registrar of companies⁷.

If, after the first establishment of the committee, there is any change in its membership, the receiver must report the change to the registrar of companies⁸.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 Insolvency Rules 1986, SI 1986/1925, r 3.17(1). For the prescribed form of certificate see rr 3.17, 12.7, Sch 4 Form 3.4.

3 See under the Companies Act 1985 s 375: see COMPANIES vol 15 (2009) PARA 661.

4 Insolvency Rules 1986, SI 1986/1925, r 3.17(2) (substituted by SI 1987/1919).

5 Insolvency Rules 1986, SI 1986/1925, r 3.17(2A) (added by SI 1987/1919).

6 Insolvency Rules 1986, SI 1986/1925, r 3.17(3). For the prescribed form of amended certificate see rr 3.17, 12.7, Sch 4 Form 3.4.

7 Ibid r 3.17(4). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

8 Ibid r 3.17(5). For the prescribed form of report see rr 3.17, 12.7, Sch 4 Form 3.5.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

417 Formalities of establishment

TEXT AND NOTES--SI 1986/1925 r 3.17(1A) added, r 3.17(2), (2A), (4), (5) amended: SI 2010/686.

TEXT AND NOTES 3, 4--SI 1986/1925 r 3.17(2) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/418. Functions and meetings of the committee.

418. Functions and meetings of the committee.

The creditors' committee must assist the administrative receiver¹ in discharging his functions, and act in relation to him in such manner as may be agreed from time to time². Meetings of the committee must be held when and where determined by the receiver³. The receiver must, however, call a first meeting of the committee not later than three months after its establishment; and thereafter he must:

- 833 (1) call a meeting, if requested by a member of the committee or his representative⁴, to be held within 21 days of his receipt of the request; and
- 834 (2) call a meeting for a specified date, if the committee has previously resolved that a meeting be held on that date⁵.

The receiver must give seven days' written notice of the venue⁶ of any meeting to every member, or his representative designated for that purpose⁷, unless in any case the requirement of notice has been waived by or on behalf of any member⁸.

The acts of the creditors' committee established for any administrative receivership are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee member's representative or in the formalities of its establishment⁹.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 Insolvency Rules 1986, SI 1986/1925, r 3.18(1).

3 Ibid r 3.18(2).

4 As to committee members' representatives see para 420 post.

5 See the Insolvency Rules 1986, SI 1986/1925, r 3.18(3).

6 For the meaning of 'venue' see para 91 note 7 ante.

7 As to a representative being designated for a particular purpose see para 420 post.

8 See the Insolvency Rules 1986, SI 1986/1925, r 3.18(4).

9 Ibid r 3.30A (added by SI 1987/1919).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

418 Functions and meetings of the committee

TEXT AND NOTES--SI 1986/1925 r 3.18(3) substituted, r 3.18(3A), (5) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/419. The chairman and quorum at meetings.

419. The chairman and quorum at meetings.

Subject to the exception in the case of a meeting convened for the purpose of obtaining information from the receiver¹, the chairman at any meeting of the creditors' committee must be the administrative receiver, or a person nominated by him in writing to act². A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company³, or an employee of the receiver or his firm who is experienced in insolvency matters⁴.

A meeting of the committee is duly constituted if due notice has been given to all the members, and at least two members are present or represented⁵.

1 le pursuant to the Insolvency Rules 1986, SI 1986/1925, r 3.28(3): see para 424 post.

2 Ibid r 3.19(1). For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

3 As to insolvency practitioners and their qualification see para 8 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, r 3.19(2).

5 Ibid r 3.20.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

419 The chairman and quorum at meetings

TEXT AND NOTES 1, 2--SI 1986/1925 r 3.19(1) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/420. Committee members' representatives.

420. Committee members' representatives.

A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose¹. A person acting as a committee member's representative must hold a letter of authority entitling him so to act, either generally or specially, and signed by or on behalf of the committee member². For this purpose, any proxy or any authorisation under the Companies Act 1985³ in relation to any meeting of creditors of the company is, unless it contains a statement to the contrary, to be treated as a letter of authority to act generally signed by or on behalf of the committee member⁴.

The chairman⁵ at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient⁶. No member may be represented by a body corporate⁷, or by a person who is an undischarged bankrupt⁸, or who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking or interim bankruptcy restrictions order⁹. No person may act, on the same committee, at one and the same time as representative of more than one committee member, or act both as a member of the committee and as representative of another member¹⁰. Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature¹¹.

1 Insolventcy Rules 1986, SI 1986/1925, r 3.21(1).

2 Ibid r 3.21(2) (amended by SI 1987/1919).

3 Ie under the Companies Act 1985 s 375: see COMPANIES vol 14 (2009) PARA 661.

4 Insolventcy Rules 1986, SI 1986/1925, r 3.21(2) (as amended: see note 2 supra).

5 As to the chairman of the creditors' committee see para 419 ante.

6 Insolventcy Rules 1986, SI 1986/1925, r 3.21(3).

7 For the meaning of 'body corporate' see para 5 note 13 ante.

8 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 Insolventcy Rules 1986, SI 1986/1925, r 3.21(4) (amended by SI 2004/584).

10 Insolventcy Rules 1986, SI 1986/1925, r 3.21(5).

11 Ibid r 3.21(6).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

420 Committee members' representatives

TEXT AND NOTES 2-4--SI 1986/1925 r 3.21(2) amended: SI 2009/2472.

TEXT AND NOTES 7-10--SI 1986/1925 r 3.21(4) substituted, r 3.21(5) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/421. Resignation, termination of membership and removal.

421. Resignation, termination of membership and removal.

A member of the creditors' committee may resign by notice in writing delivered to the administrative receiver¹.

Membership of the creditors' committee is automatically terminated if the member:

- 835 (1) becomes bankrupt²; or
- 836 (2) at three consecutive meetings of the committee is neither present nor represented, unless at the third of those meetings it is resolved that these provisions shall not apply to his case; or
- 837 (3) ceases to be, or is found never to have been, a creditor³.

If, however, the cause of the termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee⁴.

A member of the committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution⁵.

¹ Insolvency Rules 1986, SI 1986/1925, r 3.22. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

² See BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

³ Insolvency Rules 1986, SI 1986/1925, r 3.23(1) (amended by SI 2004/584).

⁴ Insolvency Rules 1986, SI 1986/1925, r 3.23(2).

⁵ Ibid r 3.24.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

421 Resignation, termination of membership and removal

TEXT AND NOTE 3--SI 1986/1925 r 3.23(1) amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/422. Vacancies.

422. Vacancies.

If there is a vacancy in the membership of the creditors' committee, such vacancy need not be filled if the administrative receiver¹ and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below the required minimum². Alternatively, the receiver may appoint any creditor, being qualified³ to be a member of the committee, to fill the vacancy if a majority of the other members of the committee agree to the appointment and the creditor concerned consents to act⁴.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 Insolvency Rules 1986, SI 1986/1925, r 3.25(1), (2). As to the required minimum see r 3.16; and para 416 ante.

3 Is qualified under the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 416 ante.

4 Ibid r 3.25(1), (3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

422 Vacancies

NOTE 4--SI 1986/1925 r 3.25(4), (5) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/423. Procedure at meetings; resolutions by post.

423. Procedure at meetings; resolutions by post.

At any meeting of the creditors' committee, each member of it, whether present himself or by his representative¹, has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it². Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting³. A record of each resolution must be signed by the chairman⁴ and kept as part of the records of the receivership⁵.

The administrative receiver may, however, seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member, or his representative designated for the purpose, a copy of the proposed resolution⁶. Where the receiver makes use of such procedure, he must send out to members of the committee or their representatives, as the case may be, a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent⁷. Any member of the committee may, within seven business days⁸ from the date of the receiver sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution⁹. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the receiver is notified in writing by a majority of the members that they concur with it¹⁰. A copy of every resolution so passed and a note that the committee's concurrence was obtained must be kept with the records of the receivership¹¹.

1 As to committee members' representatives see para 420 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 3.26(1).

3 Ibid r 3.26(2).

4 As to the chairman of the creditors' committee see para 419 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 3.26(3).

6 Ibid r 3.27(1). For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

7 Ibid r 3.27(2) (amended by SI 1987/1919).

8 For the meaning of 'business day' see para 113 note 4 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 3.27(3).

10 Ibid r 3.27(4).

11 Ibid r 3.27(5).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

423 Procedure at meetings; resolutions by post

TEXT AND NOTES 1-5--SI 1986/1925 r 3.26(2) substituted, r 2.26(3) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/424. Information from administrative receiver.

424. Information from administrative receiver.

Where the creditors' committee resolves to require the administrative receiver¹ to attend before it for the purpose of furnishing the committee with such information relating to the carrying out by him of his functions as the committee may reasonably require², the notice to him must be in writing signed by the majority of the members of the committee for the time being; and a member's representative³ may sign for him⁴. The meeting at which the receiver's attendance is required must be fixed by the committee for a business day⁵, and must be held at such time and place as he determines⁶. Where the receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the receiver or any nominee of his⁷.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 Ie pursuant to the Insolvency Act 1986 s 49(2): see para 415 ante.

3 As to committee members' representatives see para 420 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 3.28(1).

5 For the meaning of 'business day' see para 113 note 4 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 3.28(2).

7 Ibid r 3.28(3).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/425. Expenses of members.

425. Expenses of members.

The administrative receiver¹ must out of the assets of the company defray any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives² in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the receivership³; but this provision does not apply to any meeting of the committee held within three months of a previous meeting, unless the meeting in question is summoned at the instance of the administrative receiver⁴.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 As to committee members' representatives see para 420 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 3.29(1).

4 Ibid r 3.29(2).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(7) CREDITORS' COMMITTEE/426. Members' dealings with the company.

426. Members' dealings with the company.

Membership of the creditors' committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value¹. The court may, on the application² of any person interested, set aside a transaction which appears to it to be contrary to the above requirements and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction³.

1 Insolvency Rules 1986, SI 1986/1925, r 3.30(1).

2 As to the mode of application and the procedure see para 1055 et seq post.

3 Insolvency Rules 1986, SI 1986/1925, r 3.30(2).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(8) ACCOUNTS/427. Abstract of receipts and payments.

(8) ACCOUNTS

427. Abstract of receipts and payments.

The administrative receiver¹ must:

- 838 (1) within two months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months; and
- 839 (2) within two months after he ceases to act as administrative receiver,

send to the registrar of companies², to the company, to the person by whom he was appointed, and to each member of the creditors' committee³ (if there is one), the requisite accounts of his receipts and payments as receiver⁴. The court⁵ may, on the receiver's application, extend the two-month period mentioned above⁶.

The accounts must be in the form of an abstract showing:

- 840 (a) receipts and payments during the relevant period of 12 months; or
- 841 (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last 12-month period to the time when he so ceased; alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as administrative receiver⁷.

These provisions are without prejudice to the receiver's duty to render proper accounts otherwise than as stated above⁸.

If the administrative receiver makes default in complying with these provisions, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁹.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 As to the creditors' committee see para 415 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, r 3.32(1). For the prescribed form of abstract of receipts and payments see rr 3.32, 12.7, Sch 4 Form 3.6.

5 Ie, if proceedings have not been commenced in which the application may be made, the court having jurisdiction to wind up the company. As to the courts having winding-up jurisdiction see para 438 et seq post. For the meaning of 'the court' see para 4 ante. As to the mode of application and the procedure see para 1055 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 3.32(2).

7 Ibid r 3.32(3).

8 Ibid r 3.32(4).

9 Ibid rr 3.32(5), 12.21, Sch 5. The Insolvency Act 1986 s 431 (as amended) (summary proceedings: see para 927 post) has effect in relation to such an offence as it does in relation to offences under the Insolvency Act 1986: Insolvency Rules 1986, SI 1986/1925, r 12.21(5). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/(8) ACCOUNTS/428. VAT bad debt relief.

428. VAT bad debt relief.

With respect to supplies made prior to 27 July 1990¹, it is the duty of the administrative receiver² to issue a certificate of insolvency³ forthwith upon his forming the opinion that the relevant circumstances in which a company is deemed insolvent for the purposes of the provisions relating to VAT bad debt relief are satisfied⁴. There must in the certificate be specified:

- 842 (1) the name of the company and its registered number;
- 843 (2) the name of the administrative receiver and the date of his appointment; and
- 844 (3) the date on which the certificate is issued⁵.

Notice of the issue of the certificate must be given by the administrative receiver within three months of his appointment or within two months of issuing the certificate, whichever is the later, to all of the company's unsecured creditors of whose address he is then aware and who have, to his knowledge, made supplies to the company, with a charge to VAT, at any time before his appointment⁶. Thereafter, he must give the notice to any creditor of whose address and supplies to the company he becomes aware⁷; but he is not under obligation to provide any creditor with a copy of the certificate⁸.

The certificate must be retained with the company's accounting records, and the provisions relating to where and for how long records are to be kept⁹ apply to the certificate as they apply to those records¹⁰. It is the duty of the administrative receiver, on vacating office¹¹, to bring this provision¹² to the attention of the directors or, as the case may be, any successor of his as administrative receiver¹³.

With respect to supplies made on or after 27 July 1990, a creditor is entitled to a refund of VAT where it has written off in its accounts the whole or part of the debt due from the company in administrative receivership and a period of six months has elapsed since the date of the supply¹⁴.

1 Claims for refunds of VAT relating to supplies made before 27 July 1990 may continue to be made in accordance with the Value Added Tax Act 1983 s 22 (repealed) notwithstanding the repeal of that provision by the Finance Act 1990: Value Added Tax Act 1994 s 100, Sch 13 para 9(1). Claims for refunds of VAT may not be made in accordance with s 36 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) para 307) in relation to: (1) any supply made before 1 April 1989; or (2) any supply as respects which a claim is or has been made under the Value Added Tax Act 1983 s 22 (repealed): Value Added Tax Act 1994 Sch 13 para 9(2) (substituted by the Finance Act 1995 s 33(1), (4)). See further VALUE ADDED TAX.

2 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

3 In the terms of the Value Added Tax Act 1983 s 22(3)(b) (repealed), which specifies the circumstances in which a company is deemed insolvent for the purposes of the Value Added Tax Act 1983 s 22 (repealed).

4 Insolvency Rules 1986, SI 1986/1925, r 3.36(1).

5 Ibid r 3.36(2). As to the entitlement on the certificate see r 3.36(3).

6 Ibid r 3.37(1).

7 Ibid r 3.37(2).

8 Ibid r 3.37(3).

9 le the Companies Act 1985 s 222 (as substituted): see COMPANIES vol 15 (2009) PARA 709.

10 Insolvency Rules 1986, SI 1986/1925, r 3.38(1).

11 See para 429 et seq post.

12 le the Insolvency Rules 1986, SI 1986/1925, r 3.38(1): see the text to note 10 supra.

13 Ibid r 3.38(2).

14 See the Value Added Tax Act 1994 s 36 (as amended); the Value Added Tax Regulations 1995, SI 1995/2518, Pt XIX (regs 165-172) (as amended); and VALUE ADDED TAX vol 49(1) (2005 Reissue) para 307. See also note 1 supra.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

428 VAT bad debt relief

TEXT AND NOTES 1-13--SI 1986/1925 re 3.36-3.38 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (9) RESIGNATION, REMOVAL OR DEATH OF ADMINISTRATIVE RECEIVER/429. Vacation of office.

(9) RESIGNATION, REMOVAL OR DEATH OF ADMINISTRATIVE RECEIVER

429. Vacation of office.

On the taking effect of an administration order¹, any administrative receiver² of the company must vacate office³. He may at any time be removed from office by order of the court, but not otherwise; and he may resign his office⁴. He must also vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company⁵.

Where at any time an administrative receiver vacates office, his remuneration and any expenses properly incurred by him and any indemnity⁶ to which he is entitled out of the assets of the company are a charge on and must be paid out of any property⁷ of the company which is in his custody or under his control at that time in priority to any security⁸ held by the person by or on whose behalf he was appointed⁹.

Where an administrative receiver vacates office otherwise than by death¹⁰, he must, within 14 days after his vacation of office, send a notice to that effect to the registrar of companies¹¹. If an administrative receiver without reasonable excuse fails to comply with this obligation, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum¹².

On vacating office on completion of the receivership or in consequence of his ceasing to be qualified as an insolvency practitioner, the administrative receiver must forthwith give notice of his doing so to the company or, if it is in liquidation, to the liquidator and to the members of the creditors' committee, if any¹³.

1 As to administration orders see para 146 et seq ante.

2 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

3 Insolvency Act 1986 s 8, Sch B1 para 41(1) (added by the Enterprise Act 2002 s 248(2), Sch 16). No notice of cessation of office is required in such circumstances: Insolvency Rules 1986, SI 1986/1925, r 3.33(3).

4 Insolvency Act 1986 s 45(1). As to resignation see para 430 post. Although the court has the power to remove an administrative receiver from office, it does not have power to appoint a replacement: *Re A & C Supplies Ltd* [1998] 1 BCLC 603, [1998] BCC 708.

5 Insolvency Act 1986 s 45(2). As to insolvency practitioners and their qualification see para 8 et seq ante.

6 See para 402 ante.

7 For the meaning of 'property' see COMPANIES vol 15 (2009) PARA 1337.

8 For the meaning of 'security' see para 109 note 15 ante.

9 Insolvency Act 1986 s 45(3).

10 As to the death of an administrative receiver see para 431 post.

11 Insolvency Act 1986 s 45(4). The notice may be given by means of an indorsement on the notice required by the Companies Act 1985 s 405(2) (prospectively repealed) (see COMPANIES vol 15 (2009) PARA 1344): Insolvency Rules 1986, SI 1986/1925, r 3.35(2). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

12 Insolvency Act 1986 ss 45(5), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 3.35(1) (amended by SI 1987/1919).

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

429 Vacation of office

NOTE 3--SI 1986/1925 r 3.33(3) revoked: SI 2010/686.

NOTE 11--SI 1986/1925 r 3.35(2) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (9) RESIGNATION, REMOVAL OR DEATH OF ADMINISTRATIVE RECEIVER/430. Resignation.

430. Resignation.

An administrative receiver¹ of a company may resign his office by giving notice of his resignation in the prescribed manner² to such persons as may be prescribed³. However, before resigning his office, the administrative receiver must give at least seven days' notice of his intention to do so to the person by whom he was appointed, to the company or, if it is then in liquidation, to its liquidator, and, in any case, to the members of the creditors' committee, if any⁴. Such a notice must specify the date on which the receiver intends his resignation to take effect⁵. No notice is, however, necessary if the receiver resigns in consequence of the making of an administration order⁶.

Where an administrative receiver vacates office otherwise than by death⁷, he must, within 14 days after his vacation of office, send a notice to that effect to the registrar of companies⁸. If the administrative receiver fails without reasonable excuse to comply with this obligation, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁹.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 For the prescribed form of notice see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 3.9.

3 Insolvency Act 1986 s 45(1).

4 Insolvency Rules 1986, SI 1986/1925, r 3.33(1) (amended by SI 1987/1919).

5 Insolvency Rules 1986, SI 1986/1925, r 3.33(2).

6 Ibid r 3.33(3). As to administration orders see para 146 et seq ante.

7 As to the death of an administrative receiver see para 431 post.

8 Insolvency Act 1986 s 45(4). The notice may be given by means of an indorsement on the notice required by the Companies Act 1985 s 405(2) (prospectively repealed) (see COMPANIES vol 15 (2009) PARA 1344): Insolvency Rules 1986, SI 1986/1925, r 3.35(2). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

9 Insolvency Act 1986 ss 45(5), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

430 Resignation

TEXT AND NOTE 6--SI 1986/1925 r 3.33(3) revoked: SI 2010/686.

NOTE 8--SI 1986/1925 r 3.35(2) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/6. ADMINISTRATIVE RECEIVERS/ (9) RESIGNATION, REMOVAL OR DEATH OF ADMINISTRATIVE RECEIVER/431. Death.

431. Death.

If the administrative receiver¹ dies, the person by whom he was appointed must, on his becoming aware of the death, give notice² of it to the registrar of companies³, to the company, or, if it is in liquidation, to the liquidator, and, in any case, to the members of the creditors' committee⁴, if any⁵.

1 For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

2 For the prescribed form of notice see the Insolvency Rules 1986, SI 1986/1925, rr 3.34, 12.7, Sch 4 Form 3.7.

3 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 As to the creditors' committee see para 415 et seq ante.

UPDATE

UPDATE

380-431 Administrative Receivers

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/432. How a company may be extinguished.

7. WINDING UP IN GENERAL

432. How a company may be extinguished.

A registered company¹ may be extinguished by winding up² or, in certain cases, by being dissolved or struck off the register without any winding-up proceedings being taken³.

¹ I.e. a company registered under the Companies Act 1985 or under the former Companies Acts. As to 'the former Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

² *Princess Reuss v Bos* (1871) LR 5 HL 176 at 193, 197, 202; cf *Broderip v Salomon* [1895] 2 Ch 323 at 337, 341, CA (revsd sub nom *Salomon v A Salomon & Co Ltd* [1897] AC 22 at 30, HL).

³ See COMPANIES vol 15 (2009) PARA 1521 et seq.

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/433. Different kinds of winding up.

433. Different kinds of winding up.

The winding up of a company¹ may be either:

- 845 (1) by the court²; or
- 846 (2) voluntary³.

In a voluntary winding up, on application duly made, the court may exercise any powers which it might exercise if the company were being wound up by the court⁴.

The winding up of a company brings into operation a statutory scheme for dealing with the assets of the company⁵.

1 For the meaning of 'company' for these purposes (except in the case of winding up relating to a limited liability partnership (Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3: see para 1308 post)), see the Companies Act 1985 s 735 (applied by the Insolvency Act 1986 s 251); and COMPANIES vol 14 (2009) PARAS 1, 24. See further para 435 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Ie under the Insolvency Act 1986 ss 117-162 (as amended): see para 438 et seq post. The power to order winding up subject to the supervision of the court was abolished with effect from 29 December 1986. As to the significance of this date see para 2 ante.

3 Ibid s 73(1). Part IV Ch I (ss 73-83), Chs VII-X (ss 163-219) (as amended) relate to winding up generally, except where otherwise stated: s 73(2). See para 437 post. As to voluntary winding up see Pt IV Chs II-V (ss 84-116) (as amended); and para 939 et seq post.

4 See ibid s 112; and para 1012 post.

5 See para 434 et seq post. See also *Ayerst (Inspector of Taxes) v C & K (Construction) Ltd* [1976] AC 167 at 176-177, [1975] 2 All ER 537 at 540-541, HL, per Lord Diplock (where the essential characteristics of the statutory scheme are set out).

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

433 Different kinds of winding up

TEXT AND NOTES 1-3--Insolvency Act 1986 s 73 substituted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/434. Application of statutory provisions.

434. Application of statutory provisions.

The statutory provisions relating to winding up are for the most part contained in the Insolvency Act 1986¹. Unless the contrary intention appears, the provisions of the Insolvency Act 1986 with respect to winding up apply to the winding up of a company whether by the court or voluntarily² where the winding up commenced on or after 29 December 1986³.

1 See the Insolvency Act 1986 Pt IV (ss 73-219) (as amended); and para 438 et seq post. As to the winding up of unregistered companies see Pt V (ss 220-229) (as amended); and para 1147 et seq post. See also Pt VI (ss 230-246) (as amended), Pt VII (ss 247-251) (as amended), Pt XII (ss 386, 387) (as amended) (see para 763 et seq post), Pt XIII (ss 388-398) (as amended) (see para 8 et seq ante), Pt XIV (ss 399-410) (as amended) (see para 503 et seq post), Pt XV (ss 411-422) (as amended) (see para 1041 et seq post), Pt XVII (ss 426-434) (as amended), Pt XVIII (ss 435, 436) (as amended).

The practice in winding up, so far as not laid down by the Insolvency Act 1986, is for the most part regulated by rules made under it: see para 2 text and note 5 ante.

2 See *ibid* s 73; and para 433 ante.

3 As to the significance of this date see para 2 ante. As to the commencement of the winding up see para 489 post. The provisions of the Insolvency Act 1986 with respect to winding up, other than those mentioned below, do not apply in the case of a company the winding up of which commenced, or is treated as having commenced, before 29 December 1986; and the provisions contained in the Companies Act 1985 Pt XX (ss 501-664), Pt XXI (ss 665-674), without the amendments in the Insolvency Act 1985 Sch 6 paras 23-52 or the associated repeals made by that Act, continue to have effect: Insolvency Act 1986 Sch 11 para 4(1), (2). In such cases:

17 (1) where a winding up by the court in England and Wales commenced, or is treated as having commenced, before 29 December 1986, the official receiver or, on appeal from a refusal by him, the court, may, at any time on or after that date:

1. (a) release a person from an obligation imposed on him by or under the Companies Act 1985 s 528 (repealed) (statement of affairs); or

2

2. (b) extend the period specified in s 528(6) (repealed),

3

18 and accordingly, on and after 29 December 1986, s 528(6) (repealed) has effect in relation to a winding up to which the Insolvency Act 1986 Sch 11 para 5 applies with modifications (Sch 11 para 5(1), (2));

19 (2) as regards the liquidator in the case of a winding up by the court in England and Wales commenced, or treated as having commenced, before 29 December 1986:

3. (a) the official receiver may, at any time when he is liquidator of the company, apply to the Secretary of State for the appointment of a liquidator in his, the official receiver's, place; and, on any such application, the Secretary of State must either make an appointment or decline to make one (Sch 11 para 6(1), (2));

4

4. (b) where, immediately before 29 December 1986, the liquidator of the company had not made an application under the Companies Act 1985 s 545 (repealed) (release of liquidator), then: (i) except where the Secretary of State otherwise directs, the Insolvency Act 1986 s 146(1), (2) (see para 626 post) and s 172(8) (see para 618 post) apply and the Companies Act 1985 s 545 (repealed) does not apply in relation to any liquidator of that company who holds office on or at any time after 29 December 1986 and is not the official receiver; (ii) the Insolvency Act 1986 s 146(3) (see para 626 post) applies in

relation to the carrying out at any time after 29 December 1986 by any liquidator of the company of any of his functions; and (iii) a liquidator in relation to whom s 172(8) has effect by virtue of this provision has his release with effect from the time specified in s 174(4)(d) (see para 627 post) (Sch 11 para 6(1), (3));

5

5. (c) s 174(6) (see para 628 post) has effect for the purposes of head (2)(b)(iii) supra as it has for the purposes of s 174, but as if the reference to s 212 were a reference to the Companies Act 1985 s 631 (repealed) (Insolvency Act 1986 Sch 11 para 6(1), (4));

6

6. (d) the liquidator may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but, if he does so employ a solicitor, he must inform the committee of inspection that he has done so (Sch 11 para 6(1), (5));

7

- 20 (3) the repeals in the Insolvency Act 1985 Sch 10 Pt II of references (in the Companies Act 1985 and elsewhere) to a winding up under the supervision of the court do not affect the operation of the enactments in which the references are contained in relation to any case in which an order under s 606 (repealed) (power to order winding up under supervision) was made before 29 December 1986 (Insolvency Act 1986 Sch 11 para 7);
- 21 (4) the powers contained in Sch 11 paras 4-7 (see heads (1)-(3) supra) are without prejudice to the power conferred by the Insolvency Act 1986 under which rules made under s 411 (see para 1041 post) may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into force of the rules or of s 411 (Sch 11 para 8);
- 22 (5) where a provision in Pt VI (as amended) applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before 29 December 1986 may not be set aside under that provision except to the extent that it could have been set aside under the law in force immediately before that date, assuming for this purpose that any relevant administration order (see para 146 ante) had been a winding-up order; and the references to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction (Sch 11 para 9).

As to transactions at an undervalue and preferences see para 843 et seq post. As to the official receiver see para 503 et seq post. As to the Secretary of State see para 11 note 10 ante.

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/435. Companies which may be wound up.

435. Companies which may be wound up.

The winding-up provisions contained in the Insolvency Act 1986 apply to the following companies:

- 847 (1) companies formed and registered under the Companies Act 1985¹;
- 848 (2) companies formed and registered under the Joint Stock Companies Acts², the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929 or the Companies Acts 1948 to 1983, except those registered in Northern Ireland or the Republic of Ireland³;
- 849 (3) companies registered but not formed under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929 or the Companies Acts 1948 to 1983, except those registered in Northern Ireland or the Republic of Ireland⁴;
- 850 (4) companies registered under the Companies Act 1985 but not formed under that Act⁵, even though the registration took place with a view to the winding up⁶;
- 851 (5) unlimited companies registered in pursuance of the Companies Act 1879, the Companies (Consolidation) Act 1908⁷, the Companies Act 1929⁸, the Companies Act 1948⁹, or the Companies Act 1967¹⁰, as limited companies¹¹;
- 852 (6) unregistered companies¹².

There are also certain companies and societies which, by statutes other than the Insolvency Act 1986, may be wound up under that Act, namely incorporated building societies (which may be wound up voluntarily or by the court)¹³, registered industrial and provident societies (which may be wound up by the court or voluntarily by resolution)¹⁴, and incorporated friendly societies (which may be wound up voluntarily or by the court)¹⁵. The Financial Services Authority¹⁶ may also petition the court for the winding up of certain bodies¹⁷.

A company registered in Scotland may not be wound up in England, even if it has branch offices in England¹⁸; but a company registered in England with a registered office in Scotland may be¹⁹.

1 See the Insolvency Act 1986 s 73; and para 433 ante. For the general meaning of 'company' in the Companies Act 1985 (applied by the Insolvency Act 1986 s 251) see COMPANIES vol 14 (2009) PARAS 1, 24.

2 For the meaning of 'the Joint Stock Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

3 Companies Act 1985 ss 675, 679, 735(1); Insolvency Act 1986 ss 251, 441.

4 Companies Act 1985 ss 676, 679.

5 See *ibid* s 689, Sch 21 (amended by the Companies Act 1989 s 108(2)).

6 Companies Act 1985 s 680(1); *Southall v British Mutual Life Assurance Society* (1871) 6 Ch App 614. A company incorporated under a special Act, which has voluntarily registered under the Companies Act 1985 Pt XXII Ch II (ss 680-690) (as amended) (see COMPANIES vol 14 (2009) PARA 33 et seq), may be wound up by the court: *Re Ennis and West Clare Rly Co* (1879) 3 LR Ir 94; and see *Re London Indiarubber Co* (1866) 1 Ch App 329; *Bowes v Directors of Hope Life Insurance and Guarantee Co* (1865) 11 HL Cas 389; *Re Bank of London and National Provincial Insurance Association* (1871) 6 Ch App 421.

7 See the Companies (Consolidation) Act 1908 s 57 (repealed).

- 8 See the Companies Act 1929 s 16 (repealed).
- 9 See the Companies Act 1948 s 16 (repealed).
- 10 See the Companies Act 1967 s 44 (repealed).
- 11 Companies Act 1985 s 677.
- 12 Insolvency Act 1986 s 221(1). An unregistered company cannot be wound up under the Insolvency Act 1986 voluntarily except in accordance with EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings'): Insolvency Act 1986 s 221(4) (amended by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 9). See further para 1148 et seq post. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.
- 13 See the Building Societies Act 1986 ss 86, 88, 89, Schs 15, 16 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2071, 2072. As to dissolution by consent see s 87; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2066-2070.
- 14 See the Industrial and Provident Societies Act 1965 s 16(4)(b), s 55(a) (as amended), s 56. A society may also be dissolved by instrument of dissolution: see s 55(b), 58 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2566 et seq. As to the procedure for winding up see para 436 post.
- 15 See the Friendly Societies Act 1992 ss 19-26 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2143 et seq.
- 16 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.
- 17 See the Financial Services and Markets Act 2000 s 367; para 444 post; and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497.
- 18 *Re Scottish Joint Stock Trust* [1900] WN 114.
- 19 *Re Baby Moon (UK) Ltd* [1985] PCC 103.

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

435 Companies which may be wound up

NOTE 12--Insolvency Act 1986 s 221(1) amended: SI 2009/1941.

NOTE 14--Industrial and Provident Societies Act 1965 s 55 substituted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/436. Industrial and provident societies.

436. Industrial and provident societies.

If the affairs of a registered industrial and provident society are wound up by order of the court or voluntarily by resolution under the Insolvency Act 1986, the winding-up provisions of that Act apply to the winding up, except that:

- 853 (1) all documents which, in the case of a company, would have to be sent to the registrar of companies for registration and recording must, in the case of a registered society, be sent to the Financial Services Authority¹; and
- 854 (2) the liability of present or past members of the society to contribute for the payment of its debts and liabilities, expenses of winding up and the adjustment of the rights of contributories among themselves is qualified by special provisions².

On a petition to the court for a winding-up order on the ground that it is just and equitable that the society should be wound up³, an order will not be made for the reason only that the committee has exercised its power under rules to suspend the right of withdrawing share capital for successive periods before the presentation of the petition, unless there is further proof of the impossibility of carrying on the society's business⁴.

1 See the Industrial and Provident Societies Act 1965 s 55(a) (amended by the Insolvency Act 1986 s 439(2), Sch 14; and the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, art 13(1), (2), Sch 3 paras 214, 215(i), 229(a), Sch 4); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2566 et seq. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq. By virtue of the Industrial and Provident Societies Act 1965 s 55 (as amended), an industrial and provident society may be wound up as a company registered under the Companies Act 1985 and does not have to be wound up as an unregistered company (see para 1147 et seq post): *Re Norse Self Build Association Ltd* [1985] BCLC 219. Unlike other companies, a credit union may be wound up if its membership falls below 21: see the Industrial and Provident Societies Act 1965 s 55(a) (as so amended); and the Credit Unions Act 1979 s 6(1)(d) (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; the Insolvency Act 1986 s 439(2), Sch 14; and the Deregulation (Industrial and provident Societies) Order 1996, SI 1996/1738, art 3(1), (2)(b)). As to the procedure in winding up, and the documents to be supplied, in the case of winding up by the court see para 438 et seq post; and as to the procedure in winding up, and the documents to be supplied, in the case of voluntary winding up see para 939 et seq post.

2 See the Industrial and Provident Societies Act 1965 s 57; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2576.

3 See the Insolvency Act 1986 s 122(1)(g); and para 444 post.

4 *Re Horsham Industrial and Provident Society Ltd* (1894) 70 LT 801.

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

436 Industrial and provident societies

NOTE 1--Industrial and Provident Societies Act 1965 s 55 substituted: SI 2009/1941.
Credit Unions Act 1979 s 6(1)(d) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/437. Provisions applicable generally in winding up; rights of member state liquidator.

437. Provisions applicable generally in winding up; rights of member state liquidator.

Certain provisions¹ of the Insolvency Act 1986 are of general application, whichever the mode of winding up², although in certain instances their application may vary in detail according to the mode of winding up.

Where a member state liquidator³ has been appointed in relation to a company, without prejudice to the generality of the member state liquidator's right to participate in respect of the exercise of creditors' rights⁴, for the purposes of certain provisions⁵ the liquidator is deemed to be a creditor⁶.

Without prejudice to the generality of the obligations otherwise imposed on liquidators to co-operate and communicate information⁷, where the liquidator is obliged to give notice to, or provide a copy of a document, including an order of the court, to the court, the registrar of companies or the official receiver, the liquidator must give notice or provide copies, as the case may be, to the member state liquidator⁸.

1 I.e. the Insolvency Act 1986 ss 74, 75 (liabilities as contributories of past and present members of the company: see paras 704-705 post); s 76 (liability of past directors and shareholders: see para 713 post); s 77 (limited company formerly unlimited: see para 706 post); s 78 (unlimited company formerly limited: see para 706 post); s 79 (meaning of 'contributory': see para 703 post); s 80 (nature of a contributory's liability: see para 718 post); ss 81, 82 (death or bankruptcy of a contributory: see paras 709-711 post); s 83 (liabilities of contributories in the case of companies registered under the Companies Act 1985 Pt XXII Ch II (ss 680-690) (as amended): see para 714 post); the Insolvency Act 1986 ss 175, 176 (preferential debts: see para 763 et seq post); s 176A (as added) (share of assets for unsecured creditors: see para 322 ante); s 177 (special managers: see para 498 post); ss 178-182 (disclaimer: see para 866 et seq post); ss 183, 184 (as amended) (execution and attachment: see para 882 et seq post); s 186 (rescission of contracts by the court: see para 875 post); s 187 (power of liquidator to make assets over to employees: see para 830 post); s 188 (notification that company is in liquidation: see para 487 post); s 189 (interest on debts: see para 827 post); s 190 (documents exempt from stamp duty: see para 746 post); s 191 (company's books as evidence: see para 1075 post); s 192 (information as to pending liquidations: see paras 602, 1005, 1008 post); s 194 (resolutions passed at adjourned meetings: see para 665 post); s 195 (meetings to ascertain the wishes of creditors or contributories: see paras 480, 651 post); s 196 (judicial notice of court documents: see para 1047 post); s 197 (special commissions for receiving evidence: see para 1081 post); s 198 (orders for examination of persons in Scotland: see para 1082 post); s 200 (affidavits in the United Kingdom and other countries: see para 1079 post); s 205 (provisions as to dissolution: see para 931 post); ss 206-211 (s 206 as amended) (offences committed in anticipation, or in the course, of winding up: see para 905 et seq post); s 212 (as amended) (summary remedy against delinquent directors, liquidators and other officers: see para 688 et seq post); ss 213-215 (responsibility for fraudulent and wrongful trading: see para 911 et seq post); ss 216, 217 (restriction on re-use of company names: see para 916 et seq post); and ss 218, 219 (as amended) (investigation and prosecution of malpractice: see paras 924 et seq, 1015 et seq post). As to the application of certain statutory provisions to winding up and other types of company insolvency proceedings see para 2 ante.

2 Ibid s 73(2).

3 For the meaning of 'member state liquidator' see para 460 note 15 ante.

4 I.e. under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) ('the European Regulation on Insolvency Proceedings') art 32: see paras 54, 57 ante.

5 The provisions referred to are the Insolvency Rules 1986, SI 1986/1925, r 4.43(1) (as amended) (official receiver's report: see para 527 post), r 4.45(1) (as amended) (report on statement of affairs: see para 528 post), r 4.46(2) (report where there is no statement of affairs: see para 529 post), r 4.47(2) (general rule on reporting: see para 530 post), r 4.48(2) (winding up stayed: see para 531 post), r 4.49 (as amended) (information to creditors: see para 958 post), r 4.50(2) (notice of meetings: see para 532 post), r 4.51(2) (as

amended) (notice of creditors' meeting in a creditors voluntary winding up: see para 945 post), r 4.54 (power to call meetings: see para 949 post), r 4.57(1) (requisitioned meetings: see para 652 post), rr 4.57(3), 4.67 (as amended) (entitlement of creditors: see paras 652, 668 post), r 4.68 (chairman's discretion to allow a vote in a creditors' voluntary winding up: see para 949 post), r 4.70 (admission and rejection of proofs at a creditors' meeting: see para 949 post), r 4.73 (as amended) (meaning of 'prove': see para 1001 post), r 4.74 (as substituted) (supply of forms: see para 777 post), r 4.75 (as amended) (contents of proof: see para 778), r 4.76 (particulars of creditor's claim: see para 1001 post), r 4.77 (claim established by affidavit: see para 779 post), r 4.78 (cost of proving: see para 780 post), r 4.79 (inspection of proofs: see para 781 post), r 4.82 (admission and rejection of proofs for dividend: see para 783 post), r 4.83(1) (appeal against decision in relation to proof: see para 786 post), rr 4.83(2), 4.84 (withdrawal of variation of proof: see para 787 post), r 4.85(1) (expunging of proof: see para 788 post), r 4.86 (estimate of quantum: see para 789 post), r 4.87 (negotiable instruments: see para 790 post), r 4.88 (secured creditors: see para 798 post), r 4.89 discounts: see para 791 post), r 4.90 (as amended) (mutual credit and set-off: see para 792 post), r 4.91 (as amended) (debt in foreign currency: see para 793 post), r 4.92 (payment of a periodical nature: see para 794 post), r 4.93 (as amended) (interest: see para 795 post), r 4.101A (as added) (power to fill vacancy in office of liquidator: see para 980), r 4.102(5) (appointment by court: see para 558 post), r 4.103(4) (appointment by court in a creditors' voluntary winding up: see para 982 post), r 4.113(1) (meeting of creditors to remove liquidator: see para 613 post), r 4.114(1) (meeting of creditors to remove liquidator in a creditors' voluntary winding up: see para 985 post), r 4.115 (regulation of meetings: see para 613 post), r 4.124(1) (as amended) (release of official receiver: see para 624 post), r 4.125(1) (as amended) (final meeting: see para 627 post), r 4.126(1) (final meeting in a creditors' voluntary winding up: see para 1020 post), r 4.131(1) (challenge to liquidator's remuneration: see para 592 post), r 4.152(1) (liquidation committee: see para 630 post), r 4.152(3) (eligibility for liquidation committee: see para 630 post), r 4.163(3) (vacancy on liquidation committee: see para 638 post), r 4.175 (as amended) (membership of liquidation committee: see para 647 post), r 4.180 (notice of dividend: see para 813 post), r 4.212(2) (notice of public examination hearing: see para 541 post).

6 Ibid r 4.231(1-4) (r 4.231 added by SI 2002/1307).

7 Ie under the European Regulation on Insolvency Proceedings art 32: see para 57 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 4.231(5), (6) (as added: see note 6 supra).

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

437 Provisions applicable generally in winding up; rights of member state liquidator

NOTE 1--See also the Insolvency Act 1986 ss 434A, 434B (representation of corporations at meetings: see PARA 663), s 434C (legal professional privilege: see PARA 928A), and ss 434D, 434E (enforcement of company's filing obligations: see PARA 437A).

NOTE 2--Insolvency Act 1986 s 73 substituted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/7. WINDING UP IN GENERAL/437A. Enforcement of company's filing obligations.

437A. Enforcement of company's filing obligations.

Where a company has made default in complying with any obligations under the Insolvency Act 1986 (1) to deliver a document to the registrar, or (2) to give notice to the registrar of any matter, the registrar, or any member or creditor of the company, must give notice to the company requiring it to comply with the obligation: Insolvency Act 1986 s 434D(1), (2) (ss 434D, 434E added by SI 2009/1941). If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, must apply to the court for an order directing the company, and any specified officer of it, to make good the default within a specified time: Insolvency Act 1986 s 434D(3). The court's order may provide that all costs of or incidental to the application are to be borne by the company or by any officers of it responsible for the default: Insolvency Act 1986 s 434D(4). Section 434D does not affect the operation of any enactment imposing penalties on a company or its officers in respect of any such default: Insolvency Act 1986 s 434D(5). As to the application of filing obligations to overseas companies, see the Insolvency Act 1986 s 434E.

UPDATE

432-437 Winding Up in general

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(1) JURISDICTION/438. Courts with winding-up jurisdiction.

8. WINDING UP BY THE COURT

(1) JURISDICTION

438. Courts with winding-up jurisdiction.

The courts¹ having jurisdiction to wind up companies registered in England and Wales² are the High Court of Justice³ and certain county courts⁴. For the purpose of that jurisdiction, these courts have all the powers of the High Court⁵; and every prescribed⁶ officer of the court must perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up⁷. A county court cannot, however, issue a writ of fieri facias addressed to the sheriff of the county for the purposes of enforcing an order of that court which directs payment of money to a liquidator⁸; nor can it decide a question as to title to property which arose before the winding up⁹, but it may declare a floating charge invalid¹⁰, or set it aside as a transaction at an undervalue or as a preference¹¹.

1 For the meaning of 'the court' see para 4 ante. Anything to be done under or by virtue of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended) by, to or before the court may be done by, to or before a judge or the registrar (rr 13.1, 13.2(1)); and the registrar may authorise any act of a formal or administrative character which is not by statute his responsibility to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor (rr 13.1, 13.2(2)); but see para 1055 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

2 As to the winding up by the court of unregistered companies see para 1147 et seq post.

3 See the Insolvency Act 1986 s 117(1); and para 439 post. Section 117 is subject to EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 3 (jurisdiction): Insolvency Act 1986 s 117(7) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 6). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

4 See the Insolvency Act 1986 s 117(2)-(4); and para 440 post. As to the jurisdiction to wind up building societies and industrial and provident societies see paras 435-436 ante.

5 Ibid s 117(5). Hence the High Court cannot issue prohibition to a county court wrongly exercising this jurisdiction; the remedy is by appeal: *Re New Par Consols Ltd (No 2)* [1898] 1 QB 669, CA; cf *Skinner v Northallerton County Court Judge* [1899] AC 439, HL.

6 For these purposes, unless the context otherwise requires, 'prescribed' means, as respects the provisions of the Insolvency Act 1986 relating to company insolvency, prescribed by the rules made under s 411 (as amended) (see para 1041 post): s 251.

7 Ibid s 117(5). As to the action to be taken where petitions are presented in both the High Court and the county court see para 483 note 1 post.

8 *Re Bassett's Plaster Co Ltd* [1894] 2 QB 96, DC. As to liquidators see para 555 et seq post.

9 *Re Ilkley Hotel Co* [1893] 1 QB 248.

10 See para 862 post.

11 See *Re F & E Stanton Ltd* [1928] 1 KB 464 (decided under the Companies Act 1948 s 320 (repealed)). As to transactions at an undervalue or preferences see para 843 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

438 Courts with winding-up jurisdiction

TEXT AND NOTES 3-7--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also 2005 Act s 19, Sch 7 para 4.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(1) JURISDICTION/439. High Court.

439. High Court.

The High Court has jurisdiction to wind up any company registered in England and Wales¹. This jurisdiction is regulated by general rules made by the Lord Chancellor with the concurrence of the Secretary of State². It is confined to the winding up of companies, and does not extend to disputes outside the winding up; consequently the Part 20 Claim procedure for contribution or indemnity³ is not applicable⁴.

District registries have only limited winding-up jurisdiction⁵.

1 Insolvency Act 1986 s 117(1). Section 117 is subject to EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 3 (jurisdiction): Insolvency Act 1986 s 117(7) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 6). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. Only the High Court has jurisdiction to wind up a company not having a share capital: cf para 440 text and note 1 post; and *Re North of England Iron Steamship Insurance Association* [1900] 1 Ch 481; *Re Monmouthshire and South Wales Employees' Mutual Indemnity Society Ltd* [1909] WN 6. In the High Court, winding-up proceedings are dealt with by the Companies Court. The jurisdiction to wind up a company is, however, conferred on the High Court, not the Companies Court; the latter is merely a way of describing the High Court when exercising its winding-up jurisdiction: *Re Shilena Hosiery Co Ltd* [1980] Ch 219 at 224, [1979] 2 All ER 6 at 9-10; *Fabric Sales Ltd v Eratex Ltd (Practice Note)* [1984] 1 WLR 863n, CA; *Partizan Ltd v OJ Kilkenny & Co Ltd* [1998] 1 BCLC 157, [1998] 1 BCC 912.

2 See the Insolvency Act 1986 s 411; and para 1041 post. As to the Secretary of State see para 11 note 10 ante. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

3 Ie under CPR Pt 20: see CIVIL PROCEDURE vol 11 (2009) PARA 618 et seq.

4 See *Re A Singer & Co (Hat Manufacturers) Ltd* [1943] Ch 121, [1943] 1 All ER 225, CA (decided in respect of the third party procedure under the former RSC Ord 16). As to the position of sureties and guarantors where a transaction at an undervalue or preference is set aside see para 843 et seq post.

5 *Re Pleatfine Ltd* [1983] BCLC 102. As to the district registrars upon whom jurisdiction in company insolvency proceedings is conferred see paras 460 note 2, 1055 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

439 High Court

TEXT AND NOTE 1--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also 2005 Act s 19, Sch 7 para 4.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(1) JURISDICTION/440. County courts.

440. County courts.

Where the amount of the company's share capital¹, paid up or credited as paid up, does not exceed £120,000², the county court of the district in which the registered office³ of the company is situated has concurrent jurisdiction with the High Court to wind up the company⁴. However, by order made by statutory instrument, the Lord Chancellor may exclude a county court from having winding-up jurisdiction, and, for the purposes of that jurisdiction, may attach its district, or any part of it, to any other county court, and may by statutory instrument revoke or vary any such order⁵. In exercising these powers, the Lord Chancellor must provide that a county court is not to have jurisdiction unless it has jurisdiction for the purposes of the provisions relating to the insolvency of individuals⁶.

Under the orders that have been made, no county court within the London insolvency district⁷ has winding-up jurisdiction, and not every county court outside that area has such jurisdiction⁸.

A winding-up case may be transferred only to a court which has winding-up jurisdiction⁹.

1 Only the High Court has jurisdiction where a company has no share capital: see para 439 note 1 ante.

2 The money sum for the time being specified in the Insolvency Act 1986 s 117(2) is subject to increase or reduction by order made by the Secretary of State under s 416: s 117(3). No such order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 416(3). Such order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient: s 416(2). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante.

3 For these purposes, a company's registered office is the place which has longest been its registered office during the six months immediately preceding the presentation of the petition for winding up (or, for the purposes of the Company Directors Disqualification Act 1986 s 6(3) (see para 1121 post), either the passing of the resolution for voluntary winding up, or the appointment of the administrator or administrative receiver, as the case may be): Insolvency Act 1986 s 117(6); Company Directors Disqualification Act 1986 s 6(3A) (added by the Insolvency Act 2000 s 8, Sch 4 paras 1, 5(1); and amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 40, 41(b)). As to the registered office of a company see COMPANIES vol 14 (2009) PARAS 129-130. As to the procedure on the presentation of a petition both in the High Court and in a county court see para 483 note 1 post.

4 Insolvency Act 1986 s 117(2). The requirement concerning the amount of the company's share capital not exceeding £120,000 does not apply in the case of a winding up in relation to a limited liability partnership: see s 117(2); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

The Insolvency Act 1986 s 117 is subject to EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 3 (jurisdiction): Insolvency Act 1986 s 117(7) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 6). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

5 Insolvency Act 1986 s 117(4). As to the courts having winding-up jurisdiction by virtue of s 117(4) see COURTS vol 10 (Reissue) para 707. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

6 Ibid s 117(4). The jurisdiction referred to in the text is jurisdiction for the purposes of Pts VIII-XI (ss 252-385) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 81 et seq.

7 As to the extent of the London insolvency district see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 7.

8 See note 5 supra.

9 See para 899 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

440 County courts

TEXT AND NOTES 2-6--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also 2005 Act s 19, Sch 7 para 4.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(1) JURISDICTION/441. Proceedings in wrong court.

441. Proceedings in wrong court.

Nothing in the statutory provisions relating to High Court and county court jurisdiction¹ invalidates a proceeding by reason of its being taken in a wrong court². The winding up of a company by the court in England and Wales, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced³.

1 I.e. the Insolvency Act 1986 s 117: see paras 439-440 ante.

2 Ibid s 118(1). 'Wrong court' means an inappropriate court and not a court having no jurisdiction: *Re Southsea Garage Ltd* (1911) 27 TLR 295. See further para 900 post.

3 Insolvency Act 1986 s 118(2); and see para 899 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(1) JURISDICTION/442. Officers of the court.

442. Officers of the court.

The officers of the court are the registrars¹, the official receivers² and, for most purposes, the liquidators³.

1 See paras 898, 1055, 1060 post.

2 See para 503 et seq post.

3 See para 566 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(1) JURISDICTION/443. When a court has jurisdiction.

443. When a court has jurisdiction.

The winding-up provisions of the Insolvency Act 1986 apply to various classes of company¹. Where a company in voluntary liquidation has been dissolved by the expiration of three months from the date of the registration of the liquidator's final return², it cannot be wound up by the court unless the dissolution has been declared void, or the petition was presented before the expiration of the three months³. The dissolution of the company, when it is struck off the register as defunct, does not affect the court's power to wind up such a company⁴. If, however, the court does make an order to wind up a company without having jurisdiction, the order cannot be treated as a nullity and, unless and until it is discharged on appeal, it is binding on the company's creditors and contributories⁵, but not on strangers⁶.

1 See para 435 ante.

2 See para 1021 post.

3 See para 1023 post.

4 See COMPANIES vol 15 (2009) PARA 1523.

5 *Re Padstow Total Loss and Collision Assurance Association* (1882) 20 ChD 137, CA; *Re London Marine Insurance Association, Andrews' and Alexander's Case, Chatt's Case, Cook's Case, Crew's Case* (1869) LR 8 Eq 176 at 189, 193; *Re Arthur Average Association* (1876) 3 ChD 522; *Re Mid-East Trading Ltd, Lehman Bros Inc v Phillips* [1998] 1 All ER 577, [1998] 1 BCLC 240, CA.

6 *Re Bowling and Welby's Contract* [1895] 1 Ch 663, CA; *Russian and English Bank and Florence Montefiore Guedalla v Baring Bros & Co Ltd* [1936] AC 405 at 416, [1936] 1 All ER 505 at 510, HL, per Lord Blanesburgh. Cf *Re Racal Communications Ltd* [1981] AC 374, [1980] 2 All ER 634, HL.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(2) GROUNDS FOR WINDING UP/444. Grounds for winding up by the court.

(2) GROUNDS FOR WINDING UP

444. Grounds for winding up by the court.

A company (not being an unregistered company¹ or society which, by statutes other than the Insolvency Act 1986, may be wound up under that Act²) may be wound up by the court if:

- 855 (1) the company has by special resolution³ resolved that the company be wound up by the court⁴;
- 856 (2) being a public company⁵ which was registered as such on its original incorporation, the company has not been issued with a certificate that the requirements of a public company's share capital have been satisfied⁶ and more than a year has expired since it was so registered⁷;
- 857 (3) the company is an old public company⁸;
- 858 (4) the company does not commence its business within a year from its incorporation⁹, or suspends its business for a whole year¹⁰;
- 859 (5) except in the case of a private company limited by shares or by guarantee, the number of members¹¹ is reduced below two¹²;
- 860 (6) the company is unable to pay its debts¹³;
- 861 (7) at the time at which a moratorium for the company¹⁴ comes to an end, no voluntary arrangement¹⁵ has effect in relation to the company¹⁶;
- 862 (8) the court is of the opinion that it is just and equitable¹⁷ that the company should be wound up¹⁸;
- 863 (9) on a petition by the official receiver or by any other person authorised to present a winding-up petition¹⁹, the court is satisfied that an existing voluntary winding up cannot be continued with due regard to the interests of creditors or contributories²⁰;
- 864 (10) it appears to the Secretary of State from any report made or information or documents obtained under certain provisions of the Companies Act 1985²¹ or the Financial Services and Markets Act 2000²² or from information obtained under the Criminal Justice Act 1987²³ or the Companies Act 1989²⁴ that it is expedient in the public interest that the company should be wound up, and the court thinks it is just and equitable for it to be wound up²⁵; or
- 865 (11) one of the conditions under which the Financial Services Authority²⁶ may present a winding-up petition to the court²⁷ is satisfied²⁸.

A limited liability partnership may be wound up by the court if:

- 866 (a) the partnership has determined that it be wound up by the court²⁹;
- 867 (b) the partnership does not commence its business within a year from its incorporation or suspends its business for a whole year³⁰;
- 868 (c) the number of members is reduced below two³¹;
- 869 (d) the partnership is unable to pay its debts³²; or
- 870 (e) the court is of the opinion that it is just and equitable that the partnership should be wound up³³.

- 1 For the meaning of 'unregistered company' see para 1147 post. As to the grounds on which an unregistered company may be wound up see para 1151 post.
- 2 See para 435 ante.
- 3 As to special resolutions see COMPANIES vol 14 (2009) PARA 614.
- 4 Insolvency Act 1986 s 122(1)(a).
- 5 For the meaning of 'public company' see para 82 ante.
- 6 Ie under the Companies Act 1985 s 117: see COMPANIES vol 14 (2009) PARA 74.
- 7 Insolvency Act 1986 s 122(1)(b). A winding-up petition may also be presented by the Secretary of State on these grounds: s 124(4)(a). Section 124(4)(a) does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; the text and notes 29-34 infra; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to the Secretary of State see para 11 note 10 ante.
- 8 Insolvency Act 1986 s 122(1)(c). For the meaning of 'old public company' see COMPANIES vol 14 (2009) PARA 183. A winding-up petition may also be presented by the Secretary of State on these grounds: s 124(4)(a).
- 9 The date of incorporation is stated in the certificate of incorporation: see the Companies Act 1985 s 13(3); and COMPANIES vol 14 (2009) PARA 119.
- 10 Insolvency Act 1986 s 122(1)(d). As to what amounts to commencement or suspension see para 445 post.
- 11 As to the meaning of 'member' see para 72 note 9 ante.
- 12 Insolvency Act 1986 s 122(1)(e) (amended by the Companies (Single Member Private Limited Companies) Regulations 1992, SI 1992/1699, reg 2(1)(b), Schedule para 8). A credit union may, however, be wound up if its membership falls below 21: see para 436 ante. As to single member private limited companies see COMPANIES vol 14 (2009) PARA 336.
- 13 Insolvency Act 1986 s 122(1)(f). As to the circumstances in which a company is deemed to be unable to pay its debts see para 446 post.
- 14 Ie a moratorium under ibid s 1A, Sch A1 para 1 (as added): see para 73 et seq ante.
- 15 Ie approved under ibid Pt I (ss 1-7B) (as amended): see para 71 et seq ante.
- 16 Ibid s 122(1)(fa) (added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 6).
- 17 For the meaning of 'just and equitable' see paras 448-449 post.
- 18 Insolvency Act 1986 s 122(1)(g). As to the circumstances in which the court is bound to make an order on this ground see para 477 post.
- 19 Ie under ibid s 124(1): see para 450 post. As to the official receiver see para 503 et seq post.
- 20 Ibid s 124(5). The presentation by the official receiver of a winding-up petition pursuant to s 124(5) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 25. As to the contracting out of the official receiver's functions generally see paras 505-506 post. As to petitions in such cases by a director, a creditor, a contributory and the official receiver see paras 450-451, 454, 458 post.
- 21 Ie under the Companies Act 1985 Pt XIV (ss 431-453) (as amended) (see COMPANIES vol 15 (2009) PARA 1541 et seq); Insolvency Act 1986 s 124A(1)(a) (s 124A added by the Companies Act 1989 s 60(3)).
- 22 Ie under the Financial Services and Markets Act 2000 s 167, s 168, s 169 or s 284 (in the case of a report) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 449, 450; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 683) and s 165, s171, s 172, s 173 or s 175 (in the case of information or documents obtained) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 447, 449, 453). This includes, where the company is an open-ended investment company within the meaning of the Financial Services and Markets Act 2000 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603), any report made under regulations made as a result of s 262(2)(k) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 621): Insolvency Act 1986 s 124A(1)(b), (bb) (s 124A as added (see note 21 supra); s 124A(1)(b) substituted, and s 124A(1)(bb) added, by the Financial

Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 305). The Insolvency Act 1986 s 124A(1)(b) (as substituted) and s 124A(1)(bb) (as added) do not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3 (amended by SI 2004/533).

23 Ie under the Criminal Justice Act 1987 s 2 (as amended) (fraud investigations: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1089 et seq): Insolvency Act 1986 s 124A(1)(c) (as added: see note 21 supra).

24 Ie under the Companies Act 1989 s 83 (powers exercisable for the purpose of assisting overseas regulatory authorities: see COMPANIES vol 15 (2009) PARA 1569): Insolvency Act 1986 s 124A(1)(d) (as added: see note 21 supra).

25 Ibid s 124(4)(b) (substituted by the Companies Act 1989 s 60(1), (2)); Insolvency Act 1986 s 124A(1) (as added and amended: see notes 21, 22 supra). Section 124A (as added and amended) does not, however, apply if the company is already being wound up by the court: s 124A(2) (as so added). The court will give special weight to the view of the Secretary of State: see *Re Lubin, Rosen and Associates Ltd* [1975] 1 All ER 577, [1975] 1 WLR 122. A request for an adjournment by a person with a genuine interest should generally be granted to enable him to put in evidence to oppose the petition: *Re Forcesun Ltd, Re Tidesdale Ltd* [2002] EWHC 443 (Ch), [2002] 2 BCLC 302. See also *Re Titan International Inc* [1998] 1 BCLC 102, CA (in the case of a public interest winding-up petition in relation to a foreign company, the court must be satisfied that the company has a real or sufficient connection with the jurisdiction of the English court, and that there is a reasonable prospect of the public interest being promoted by a winding-up order); *Re Alpha Club (UK) Ltd* [2002] EWHC 884 (Ch), [2002] 2 BCLC 612 (pyramid selling scheme grounds for public interest winding up). It would be an abuse for any person to pursue his perception of the public interest by a winding-up petition, rather than by bringing the matters complained of to the attention of the Secretary of State under the Insolvency Act 1986 s 124A (as added and amended): see *Re Millennium Advanced Technology Ltd* [2004] EWHC 711 (Ch), [2004] 1 WLR 2177.

26 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

27 Ie under the Financial Services and Markets Act 2000 ss 367 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497).

28 Financial Services and Markets Act 2000 ss 367(3). See FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497.

29 Insolvency Act 1986 s 122(1)(a); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

30 Insolvency Act 1986 s 122(1)(b); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

31 Insolvency Act 1986 s 122(1)(c); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

32 Insolvency Act 1986 s 122(1)(d); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

33 Insolvency Act 1986 s 122(1)(e); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

444 Grounds for winding up by the court

TEXT AND NOTES--As to the petition for the winding up of a European Cooperative Society see the 1986 Act s 124C (added by the European Cooperative Society Regulations 2006, SI 2006/2078, reg 33(1)).

TEXT AND NOTE 6--Now a trading certificate under the Companies Act 2006 s 761: 1986 Act s 122(1)(b) (amended by SI 2008/948).

NOTE 8--Insolvency Act 1986 s 122(1)(c) amended: SI 2009/1941.

NOTE 21--Now under the 1985 Act Pt XIV (ss 431-453) except s 448A: 1986 Act s 124A(1)(a) (amended by the Companies (Audit, Investigations and Community Enterprise) Act 2004 Sch 2 para 27).

NOTE 25--While, in most cases, the court should not refuse a petition to wind up which would otherwise be just and equitable to grant on the basis of undertakings which the Secretary of State is unwilling to accept, there is no reason for the court not to accept undertakings offered where the court would not have accepted the petition in any event: *Secretary of State for Business, Enterprise and Regulatory Reform v Amway (UK) Ltd* [2009] EWCA Civ 32, [2009] All ER (D) 239 (Jan). See also *Re UK-Euro Group plc* [2006] EWHC 2102 (Ch), [2007] 1 BCLC 812.

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445. Non-commencement or suspension of business.

Non-commencement of business within a year¹ refers to business activities, not the mere allotment of shares². An order on this ground may be made even though the majority of the shareholders oppose it³; but an order will not be made where the company has commenced business abroad within the year and a genuine intention is shown to commence business in the United Kingdom⁴.

An order will not be made on the ground that the company has suspended its business for a year⁵ if a petitioning shareholder is opposed by a large majority of shareholders and there is a genuine intention to proceed with the business⁶. A company does not cease to carry on business because it has given up part of its business⁷. An order may be made even though nothing has been paid on the shares and there are no debts⁸.

1 See the Insolvency Act 1986 s 122(1)(d); and para 444 ante.

2 *Re South Luipaards Vlei Gold Mines Ltd* (1897) 13 TLR 504, CA; *Re Caementium (Parent) Co Ltd* [1908] WN 257.

3 *Re Tumacacori Mining Co* (1874) LR 17 Eq 534.

4 *Re Capital Fire Insurance Association* (1882) 21 ChD 209; and see *Re Petersburg and Viborg Gas Co* [1874] WN 196; *Princess Reuss v Bos* (1871) LR 5 HL 176. For the meaning of 'United Kingdom' see para 12 note 2 ante.

5 See note 1 supra.

6 *Re Middlesborough Assembly Rooms Co* (1880) 14 ChD 104, CA; *Re Metropolitan Rly Warehousing Co Ltd* (1867) 36 LJ Ch 827; *Re Tomlin Patent Horse Shoe Co Ltd* (1886) 55 LT 314.

7 *Re Norwegian Titanic Iron Co Ltd* (1865) 35 Beav 223; *Re New Gas Co* (1877) 5 ChD 703, CA.

8 *Re Tumacacori Mining Co* (1874) LR 17 Eq 534; *Re Caementium (Parent) Co Ltd* [1908] WN 257; cf *Re New Gas Co* (1877) 5 ChD 703, CA (where the order was refused).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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446. Inability to pay debts.

A company, not being an unregistered company¹, is deemed unable to pay its debts²:

- 871 (1) if a creditor³, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750⁴ then due⁵, has served on the company, by leaving the same at its registered office⁶, a written demand in the prescribed form ('the statutory demand')⁷ requiring the company to pay the sum so due, and the company has for three weeks⁸ thereafter neglected⁹ to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor¹⁰; or
- 872 (2) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part¹¹; or
- 873 (3) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made¹²; or
- 874 (4) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company¹³; or
- 875 (5) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due¹⁴; or
- 876 (6) if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities¹⁵.

In the case of failure to satisfy the statutory demand, the petition must not be presented before the three weeks have expired¹⁶. Omission by a company to pay a debt by reason of a genuine dispute does not amount to a neglect to comply with the statutory demand¹⁷. Default in complying with the statutory demand of a creditor gives not only him, but other creditors and contributories, the right to petition for a winding up¹⁸.

Inability to pay debts may be shown in other ways than by proof of non-compliance with the statutory demand, as, for example, where a bill of exchange or promissory note has been dishonoured at maturity¹⁹, or a judgment creditor has not issued execution because the company's solicitor has told him that there are no assets, or no unmortgaged assets, on which he may levy²⁰. The court may infer that the company is unable to pay its debts as they fall due if it fails to pay an undisputed debt, payment of which has been demanded by the creditor²¹. Even if there is evidence showing that the company has a large surplus of assets over liabilities, the court may infer that the company is insolvent if it has failed to pay a debt which has been duly demanded²². The court will, however, be slow to infer insolvency if payment has not been duly demanded²³.

1 As to the circumstances in which an unregistered company is deemed to be unable to pay its debts see para 1152 post.

2 As to inability to pay debts as a ground for winding up see the Insolvency Act 1986 s 122(1)(f); and para 444 ante. For the meaning of 'debt' see para 749 post.

3 An assignee of part of a debt is not a creditor within the meaning of this provision (*Re Steel Wing Co Ltd* [1921] 1 Ch 349), but may petition as a creditor on other grounds as he is a creditor within the meaning of the

Insolvency Act 1986 s 124(1) (as amended) (see para 451 post). A person whose debt is in good faith disputed is not a creditor for this purpose: *Re Lympne Investments Ltd* [1972] 2 All ER 385, [1972] 1 WLR 523; *Stonegate Securities Ltd v Gregory* [1980] Ch 576, [1980] 2 All ER 241, CA. Where a company asserts that the debt is in dispute, the court must be satisfied that there is a fair and reasonable probability that the company has a bona fide defence: *London and Global Ltd v Sahara Petroleum Ltd* (1998) Times, 3 December, CA.

4 The money sum for the time being specified in the Insolvency Act 1986 s 123(1)(a) is subject to increase or reduction by order under s 416: ss 123(3), 416(1). No such order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 416(3). Such order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient: s 416(2). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 11 note 10 ante.

5 The words 'then due' mean that a statutory demand cannot be served in respect of a contingent debt, unless at the time of the service of the demand the contingency has occurred: *JSF Finance & Currency Exchange Co Ltd v Akma Solutions Inc* [2001] 2 BCLC 307, [2001] All ER (D) 134 (Feb).

6 If there is no registered office, the demand may be made at the unregistered office: *Re British and Foreign Generating Apparatus Co Ltd* (1865) 13 WR 649. A statutory demand is validly served if it is sent by registered post and actually delivered to the registered office of the company: *Re a Company (No 008790 of 1990)* [1991] BCLC 561, doubting the decision in *Re a Company* [1985] BCLC 37 (where it was decided that service by telex was not valid service of a statutory demand).

7 A written demand served by a creditor on a company under the Insolvency Act 1986 s 123(1)(a) is known in winding-up proceedings as 'the statutory demand': Insolvency Rules 1986, SI 1986/1925, r 4.4(2). As to the statutory demand see para 447 post. For the prescribed form of statutory demand see rr 4.5, 12.7, Sch 4 Form 4.1 (substituted by SI 1987/1919).

8 As to the computation of this period see *Re Lympne Investments Ltd* [1972] 2 All ER 385, [1972] 1 WLR 523 (where the general rule in computing periods of time was held to apply, namely that, in the absence of sufficient indication to the contrary, fractions of the day must be ignored and the day on which the initial event (ie the service of the demand) occurs must be excluded). See also the Insolvency Rules 1986 r 12.9; and para 1053 post.

9 If the debt is disputed on substantial grounds, failure to pay is not 'neglect': *Re Lympne Investments Ltd* [1972] 2 All ER 385, [1972] 1 WLR 523. There is no 'neglect' to pay where the debt is disputed on substantial grounds and the company, not knowing the sum due, makes payment of a lesser amount: *Re a Company* [1984] 3 All ER 78, [1984] 1 WLR 1090. Where a company asserts that the debt is in dispute, the court must be satisfied that there is a fair and reasonable probability that the company has a bona fide defence: *London and Global Ltd v Sahara Petroleum Ltd* (1998) Times, 3 December, CA.

10 Insolvency Act 1986 s 123(1)(a). Section 123(1)(a) is confined to the case of a debt which is presently payable: *Re Bryant Investment Co Ltd* [1974] 2 All ER 683, [1974] 1 WLR 826.

11 Insolvency Act 1986 s 123(1)(b).

12 Ibid s 123(1)(c).

13 Ibid s 123(1)(d).

14 Ibid s 123(1)(e).

15 Ibid s 123(2). For the meaning of 'taking into account its contingent and prospective liabilities' in the context of the Companies Act 1948 s 223(d) (repealed) see *Re a Company* [1986] BCLC 261; *Byblos Bank SAL v Al-Khudhairy* [1987] BCLC 232, CA.

16 *Re Catholic Publishing and Bookselling Co Ltd* (1864) 2 De GJ & Sm 116.

17 *Re London and Paris Banking Corp* (1875) LR 19 Eq 444. A demand in excess of what is due is a valid statutory demand: see *Cardiff Preserved Coal and Coke Co v Norton* (1867) 2 Ch App 405 at 410. As to disputed debts see para 452 post.

18 *Re Anglesea Island Coal and Coke Co Ltd, ex p Owen* (1861) 4 LT 684.

19 *Re Globe New Patent Iron and Steel Co* (1875) LR 20 Eq 337; *Re Great Northern Copper Mining Co of South Australia Ltd, ex p Great Northern Copper Mining Co of South Australia Ltd* (1869) 20 LT 264 (affd 20 LT 347); *Gandy, Petitioner* (1912) 50 SLR 3.

20 *Re Flagstaff Silver Mining Co of Utah* (1875) LR 20 Eq 268; *Re Yate Collieries and Limeworks Co* [1883] WN 171.

21 *Taylor's Industrial Flooring Ltd v M & H Plant Hire (Manchester) Ltd* [1990] BCLC 216, sub nom *Re Taylor's Industrial Flooring Ltd* [1990] BCC 44, CA. There is, therefore, no necessity to serve a statutory demand if a petition is founded on an undisputed debt payment of which has been otherwise demanded.

22 *Cornhill Insurance plc v Improvement Services Ltd* [1986] 1 WLR 114, [1986] BCLC 26.

23 *Re a Company (No 006798 of 1995)* [1996] 2 All ER 417, [1996] 1 WLR 491.

UPDATE

438-938 Winding Up by the Court

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446 Inability to pay debts

NOTE 14--The 1986 Act s 123(1)(e) permits the consideration of future debts in determining the question of insolvency: *Re Cheyne Finance plc* [2007] EWHC 2402 (Ch), [2008] 2 All ER 987.

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447. The statutory demand.

The statutory demand¹ must be dated, and be signed by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf². It must state the amount of the debt and the consideration for it or, if there is no consideration, the way in which it arises³. If the amount claimed in the demand includes:

- 877 (1) any charge by way of interest not previously notified to the company as included in its liability; or
- 878 (2) any other charge accruing from time to time,

the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated⁴. In either case, the amount claimed must be limited to that which has accrued due at the date of the demand⁵.

The statutory demand must include an explanation to the company of the following matters:

- 879 (a) the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding up of the company⁶;
- 880 (b) the time within which it must be complied with, if that consequence is to be avoided⁷; and
- 881 (c) the methods of compliance which are open to the company⁸.

Information must be provided for the company as to how an officer or representative of it may enter into communication with one or more named individuals whose address and telephone number, if any, must be given, with a view to securing or compounding for the debt to the creditor's satisfaction⁹.

1 For the meaning of 'the statutory demand' see para 446 note 7 ante. The Insolvency Rules 1986, SI 1986/1925, rr 4.4-4.6 do not, however, apply where a petition for the winding up of a company is presented under the Insolvency Act 1986 s 124 (as amended) on or after 29 December 1986 and the petition is based on failure to comply with a written demand served on the company before that date: Insolvency Rules 1986, SI 1986/1925, r 4.4(1).

2 Ibid r 4.4(3).

3 Ibid r 4.5(1). For the prescribed form of statutory demand see rr 4.5, 12.7, Sch 4 Form 4.1 (substituted by SI 1987/1919).

4 Insolvency Rules 1986, SI 1986/1925, r 4.5(2).

5 Ibid r 4.5(2).

6 Ibid r 4.6(1)(a).

7 Ibid r 4.6(1)(b).

8 Ibid r 4.6(1)(c).

9 Ibid r 4.6(2).

UPDATE

438-938 Winding Up by the Court

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447 The statutory demand

TEXT AND NOTE 8--SI 1986/1925 r 4.6(1)(d) added: SI 2010/686.

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448. Meaning of 'just and equitable'; link with partnership law.

The words 'just and equitable' in the enactment specifying the grounds for winding up by the court¹ are not to be read as being ejusdem generis with the preceding words of the enactment². They are not to be cut down by the formation of categories or headings under which cases must be brought if the enactment is to apply; nor is the impact of the words confined to cases where the petitioner is affected as a shareholder³.

The fact that the words 'just and equitable' also appear in the Partnership Act 1890 as a ground for dissolution of a partnership⁴ does, however, provide a link with the principles of equity developed in relation to partnership cases⁵. These words are a recognition of the fact that a limited company is more than a mere judicial entity with a personality in law of its own; behind it or among it there are individuals with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. These words enable the court to subject the exercise of legal rights to equitable considerations, that is to say, considerations of a personal character arising between one individual and another which may render it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way⁶.

It is not enough for the company to be a small one, or a private company. Typically the superimposition of equitable considerations requires one or more of the following elements:

- 882 (1) an association formed or continued on the basis of a personal relationship, involving mutual confidence (this element will often be found when a pre-existing partnership has been converted into a limited company);
- 883 (2) an agreement or understanding that all or some of the shareholders are to participate in the conduct of the business;
- 884 (3) restriction upon the transfer of the members' interest in the company⁷.

If a breakdown in confidence between members is due to the conduct of the petitioner, he cannot insist on the company being wound up⁸.

1 See the Insolvency Act 1986 s 122(1)(g); and para 444 ante. As to the protection of a company's members against unfair prejudice see COMPANIES vol 14 (2009) PARA 466 et seq.

2 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, [1972] 2 All ER 492, HL; *Loch v John Blackwood Ltd* [1924] AC 783, PC; *Davis & Co Ltd v Brunswick (Australia) Ltd* [1936] 1 All ER 299, PC; *Baird v Lees* 1924 SC 83, Ct of Sess; *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426, CA; *Re Newbridge Sanitary Steam Laundry Co Ltd* [1917] 1 IR 67; *Re Blériot Manufacturing Air Craft Co Ltd* (1916) 32 TLR 253; *Symington v Symington's Quarries Ltd* (1905) 8 F 121; *Re Amalgamated Syndicate* [1897] 2 Ch 600; *Re Sailing Ship Kentmere Co* [1897] WN 58. In earlier cases, however, it was held that the provision corresponding to the Insolvency Act 1986 s 122(1)(g) had to be construed ejusdem generis: *Re Agriculturist Cattle Insurance Co, ex p Spackman* (1849) 1 Mac & G 170; *Re New Gas Co* (1877) 36 LT 364 (affd 5 ChD 703, CA); *Re Suburban Hotel Co* (1867) 2 Ch App 737.

3 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 374-375, [1972] 2 All ER 492 at 496, HL, per Lord Wilberforce, with whom Viscount Dilhorne and Lord Pearson concurred at 382 and at 502 (removal of a 'working partner' director under the provision corresponding to the Companies Act 1985 s 303 (see COMPANIES vol 14 (2009) PARA 517) a ground for winding up).

All the previous cases were reviewed in *Ebrahimi v Westbourne Galleries Ltd* supra. The following cases were approved: *Symington v Symington's Quarries Ltd* (1905) 8 F 121; *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426, CA; *Loch v John Blackwood Ltd* [1924] AC 783, PC; *Baird v Lees* 1924 SC 83, Ct of Sess; *Thomson v Drysdale*

1925 SC 311; *Re Davis and Collett Ltd* [1935] Ch 693; *Elder v Elder & Watson Ltd* 1952 SC 49, Ct of Sess; *Re Fildes Bros Ltd* [1970] 1 All ER 923, [1970] 1 WLR 592; *Lewis v Haas* 1971 SLT 57; *Re Straw Products Pty Ltd* [1942] VLR 222; *Re Wondoflex Textiles Pty Ltd* [1951] VLR 458; *Tench v Tench Bros Ltd* [1930] NZLR 403; *Re Modern Retreading Co Ltd* [1962] EA 57. However, the following cases were overruled: *Re Cuthbert Cooper & Sons Ltd* [1937] Ch 392, [1937] 2 All ER 466; *Re Expanded Plugs Ltd* [1966] 1 All ER 877, [1966] 1 WLR 514.

In *Ebrahimi v Westbourne Galleries Ltd* supra differing views were expressed by Lord Wilberforce (with whom Viscount Dilhorne and Lord Pearson agreed at 382 and at 502) and by Lord Cross at 387 and at 506, as to the actual decision in *Re K/9 Meat Supplies (Guildford) Ltd* [1966] 3 All ER 320, [1966] 1 WLR 1112, and as to *Re Leadenhall General Hardware Stores Ltd* (1971) 115 Sol Jo 202, but those cases are clearly now without authority.

4 See the Partnership Act 1890 s 35(f); and PARTNERSHIP vol 79 (2008) PARA 190.

5 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379, [1972] 2 All ER 492 at 496, HL, per Lord Wilberforce, with whom Viscount Dilhorne and Lord Pearson concurred at 382 and at 502.

6 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379, [1972] All ER 492 at 500, HL, per Lord Wilberforce, with whom Viscount Dilhorne and Lord Pearson concurred at 382 and at 502. See also *Re Broadway Enterprise Ltd* [1972] 6 WWR 673; *Re Pre-Delco Machine and Tool Ltd* [1973] 3 OR 115; *Re A and BC Chewing Gum Ltd*, *Topps Chewing Gum Inc v Coakley* [1975] 1 All ER 1017, [1975] 1 WLR 579 (repudiation of basis of agreement made it just and equitable to wind up the company); *Re Zinotty Properties Ltd* [1984] 3 All ER 754, [1984] 1 WLR 1249; *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 WLR 413, [1987] BCLC 472, PC; *Re Worldhams Park Golf Course Ltd* [1998] 1 BCLC 554 (permanent state of animosity between the only two directors would justify the winding up of a company).

7 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379, [1972] All ER 492 at 500, HL, per Lord Wilberforce, with whom Viscount Dilhorne and Lord Pearson concurred at 382 and at 502. See also *Re Broadway Enterprise Ltd* [1972] 6 WWR 673; *Re Pre-Delco Machine and Tool Ltd* [1973] 3 OR 115; *Re A and BC Chewing Gum Ltd*, *Topps Chewing Gum Inc v Coakley* [1975] 1 All ER 1017, [1975] 1 WLR 579 (repudiation of basis of agreement made it just and equitable to wind up the company); *Re Zinotty Properties Ltd* [1984] 3 All ER 754, [1984] 1 WLR 1249; *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 WLR 413, [1987] BCLC 472, PC; *Re Worldhams Park Golf Course Ltd* [1998] 1 BCLC 554 (permanent state of animosity between the only two directors would justify the winding up of a company).

8 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 387, [1972] 2 All ER 492 at 507, HL, per Lord Cross; cf *Vujnovich v Vujnovich* [1990] BCLC 227, 5 BCC 740, PC.

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449. Meaning of 'just and equitable'; other cases.

Further examples of the application in particular cases of the principle that a company may be wound up where it is just and equitable to do so¹ are cases where the substratum has gone, as where the company's main object is to acquire and work a mine which is worthless, or a patent which is invalid, or a concession which has lapsed²; or where the company is a bubble company³; or where its only business is ultra vires the company⁴; or where it is a bank, and its paid-up capital is exhausted, and its uncalled capital may be called up only in a winding up⁵; or where a loss has been made on the company's principal adventure, such as providing seats for a procession which has taken place and the company is about to embark on further adventures which are ultra vires or are not the objects for which the company was formed⁶; or where a company is established on the understanding that the only project to be undertaken is the purchase and management of a night club, and the club has been sold⁷; or where the only remaining purpose is the realisation and distribution of a company's assets⁸.

A company may also be wound up on the ground that winding up is just and equitable where the company is fraudulent in its inception and carries on business at a loss, without capital of its own⁹; or where it is carrying on business at a loss and its remaining assets are insufficient to pay its debts¹⁰; or where it desires to go into liquidation with a view to a scheme which alone can save it from insolvency¹¹; or where its business is being carried on in its name for the sole benefit of debenture holders who have taken possession¹²; or where it is impossible to carry on its business owing to internal disputes which have produced a state of deadlock¹³; or where in the case of a private company one director treats its business as his own and does not carry on the business as that of the company¹⁴; or where the directors withhold information from shareholders in circumstances which give rise to suspicion that they are attempting to buy their shares at an undervalue¹⁵; or where the misconduct of directors or promoters may be successfully investigated only in a winding up by the court¹⁶; or where improprieties in management have led to the loss of mutual confidence between shareholders and directors¹⁷; or where reasonable dividends are not paid out of large profits of a company¹⁸; or where there has been an improper allotment of shares¹⁹.

Misconduct of directors²⁰ or of liquidators²¹, or the fact that its business has been carried on at a heavy loss, if the company is not insolvent²², or the issue of shares at a discount²³, is not in itself a ground for winding up; nor is the fact that the company has acted dishonestly to outsiders²⁴, or that a majority of shareholders insufficient to pass a special resolution²⁵ wish it²⁶. A winding-up order will not be made if there is an alternative effective remedy available, and the petitioners are acting unreasonably in seeking winding up²⁷. The circumstances relied on must exist at the date of the hearing of the petition²⁸. A creditor may petition only if the petition is presented bone fide in pursuit of some interest of the petitioner arising from his particular status as such, and hence a creditor cannot rely on grounds relating to the public interest²⁹.

1 See the Insolvency Act 1986 s 122(1)(g); and para 444 ante.

2 *Re Haven Gold Mining Co* (1882) 20 ChD 151, CA; *Re German Date Coffee Co* (1882) 20 ChD 169, CA; *Re Red Rock Gold Mining Co Ltd* (1889) 61 LT 785; *Re Coolgardie Consolidated Gold Mines Ltd* (1897) 76 LT 269, CA; *Re International Cable Co* (1890) 2 Meg 183; *Pirie v Stewart* (1904) 6 F 847, Ct of Sess (loss of company's only vessel); *Re Palace Restaurants Ltd* (1909) 127 LT Jo 430 (restaurant company unable to acquire site); *Re Baku Consolidated Oilfields Ltd* [1944] 1 All ER 24 (Russian undertaking expropriated); cf *Re Eastern Telegraph Co Ltd* [1947] 2 All ER 104; *Re Fromm's Extract Co Ltd* (1901) 17 TLR 302, CA; *Re Blériot Manufacturing Air Craft Co Ltd* (1916) 32 TLR 253.

Orders asked for on the grounds that the substratum was gone were refused in *Re New Gas Co* (1877) 5 ChD 703, CA; *Re Norwegian Titanic Iron Co Ltd* (1865) 35 Beav 223; *Re Nylstroom Co Ltd* (1889) 60 LT 477; *Re Electric Arms and Ammunition Syndicate Ltd* (1891) 35 Sol Jo 818; *Re Kronand Metal Co Ltd* (1899) 43 Sol Jo 368; *Re McDonald Gold Mines Ltd, ex p Duncan* (1898) 14 TLR 204, CA; *Re Kitson & Co Ltd* [1946] 1 All ER 435, CA (sale of principal but not sole business), followed in *Re Taldia Rubber Co Ltd* [1946] 2 All ER 763; *Galbraith v Merito Shipping Co Ltd* 1947 SC 446, Ct of Sess (resumption of business not shown impossible). In *Re Stratton's Independence Ltd* (1916) 33 TLR 98, while it was held that the substratum was gone, the petition was stood over to enable the majority of the shareholders to put forward a scheme for buying out the others. In *Re Eastern Telegraph Co Ltd* [1947] 2 All ER 104, the principal asset was a holding of shares in a nationalised company, and it was held, distinguishing *Re Baku Consolidated Oilfields Ltd* supra, that, pending assessment of compensation for those shares, an order for winding up would be premature. In *Re Surrey Garden Village Trust Ltd, Re Addington Smallholders Ltd* [1964] 3 All ER 962, [1965] 1 WLR 974, a petition based on the moribund nature of the company (the substratum not having technically failed) was dismissed on the ground that it was brought for an ulterior motive. As to the construction of the memorandum in order to determine what a company may do see COMPANIES vol 14 (2009) PARA 258.

In some cases the court has referred to the prospectus to ascertain the substratum: see *Re Electric Arms and Ammunition Syndicate Ltd* supra; *Re German Date Coffee Co* supra at 180; *Re Blériot Manufacturing Air Craft Co Ltd* supra; and see *Re Langham Skating Rink Co* (1877) 5 ChD 669 at 684, CA.

3 *Re London and County Coal Co* (1866) LR 3 Eq 355 at 358; cf *Re Nylstroom Co Ltd* (1889) 60 LT 477.

4 *Re Crown Bank* (1890) 44 ChD 634.

5 *Re Bristol Joint Stock Bank* (1890) 44 ChD 703.

6 *Re Amalgamated Syndicate* [1897] 2 Ch 600. A winding-up order will not necessarily be made merely because the company is proposing to do something ultra vires: *Re Irrigation Co of France, ex p Fox* (1871) 6 Ch App 176 at 184; *Re Pioneers of Mashonaland Syndicate* [1893] 1 Ch 731 at 734.

7 *Virdi v Abbey Leisure Ltd* [1990] BCLC 342, [1990] BCC 60, CA.

8 *Re Perfectair Holdings Ltd* [1990] BCLC 423, 5 BCC 837.

9 *Re Thomas Edward Brinsmead & Sons* [1897] 1 Ch 406, CA; *Re London and County Coal Co* (1866) LR 3 Eq 355; and see *Re West Surrey Tanning Co* (1866) LR 2 Eq 737.

10 *Re Wey and Arun Junction Canal Co* (1867) LR 4 Eq 197; *Re Diamond Fuel Co* (1879) 13 ChD 400, CA; *Re Great Northern Copper Mining Co of South Australia Ltd, ex p Great Northern Copper Mining Co of South Australia Ltd* (1869) 20 LT 264 (affd 20 LT 347); *Re Bristol Joint Stock Bank* (1890) 44 ChD 703. The mere fact that the company is being run at a loss is insufficient; it must be shown that there is no reasonable hope of ultimate profit: *Davis & Co Ltd v Brunswick (Australia) Ltd* [1936] 1 All ER 299 at 309, PC.

11 *Re Australian Joint-Stock Bank* (1897) 41 Sol Jo 469.

12 *Re Chic Ltd* [1905] 2 Ch 345; *Re Alfred Melson & Co Ltd* [1906] 1 Ch 841; *Re Crigglestone Coal Co Ltd* [1906] 2 Ch 327, CA; *Re Clandown Colliery Co* [1915] 1 Ch 369.

13 *Re Sailing Ship Kentmere Co* [1897] WN 58; *Symington v Symington's Quarries Ltd* (1906) 8 F 121; *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426, CA; *Re American Pioneer Leather Co* [1918] 1 Ch 556; *Re Fromm's Extract Co Ltd* (1901) 17 TLR 302, CA; cf *Re Furriers' Alliance Co Ltd* (1906) 51 Sol Jo 172; *Charles Forte Investments Ltd v Amanda* [1964] Ch 240, [1963] 2 All ER 940, CA (so far, however, as the court professed to follow *Re Cuthbert Cooper & Sons Ltd* [1937] Ch 392, [1937] 2 All ER 466, it was in error: see *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 385, [1972] 2 All ER 492 at 505, HL, per Lord Cross); *Re Bambi Restaurants Ltd* [1965] 2 All ER 79, [1965] 1 WLR 750 (the actual outcome of this case was probably wrong in the light of *Ebrahimi v Westbourne Galleries Ltd* supra). The fact that there might be deadlock if certain powers were used is insufficient: *Re Anglo-Continental Produce Co Ltd* [1939] 1 All ER 99.

14 *Baird v Lees* 1924 SC 83, Ct of Sess; *Thomson v Drysdale* 1925 SC 311; *Re Davis and Collett Ltd* [1935] Ch 693.

15 *Loch v John Blackwood Ltd* [1924] AC 783, PC.

16 *Re General Phosphate Corp Ltd* (1893) 37 Sol Jo 683; *Re Blériot Manufacturing Air Craft Co Ltd* (1916) 32 TLR 253; *Re Newbridge Sanitary Steam Laundry Ltd* [1917] 1 IR 67; and see *Re Varieties Ltd* [1893] 2 Ch 235 (where a voluntary liquidation had commenced).

17 *Jesner v Jarrad Properties Ltd* [1993] BCLC 1032, [1992] BCC 807, Ct of Sess.

- 18 *Re a Company (No 00370 of 1987), ex p Glossop* [1988] 1 WLR 1068, [1988] BCLC 570.
- 19 *Re a Company (No 005134 of 1986), ex p Harries* [1989] BCLC 383, sub nom *Re DR Chemicals Ltd* (1989) 5 BCC 39.
- 20 *Re Anglo-Greek Steam Co* (1866) LR 2 Eq 1; *Re Bwlch y Plwm Co Ltd* (1867) 17 LT 235; *Re Gold Co* (1879) 11 ChD 701, CA; *Re Shepherd's Bush Improvements Ltd* (1909) Times, 9 March, CA.
- 21 *Re London and Mediterranean Bank Ltd* (1866) 15 WR 33 at 34. As to liquidators see para 555 et seq post.
- 22 *Re Factage Parisien* (1864) 34 LJ Ch 140 (revsd on other grounds (1865) 5 New Rep 227); *Re Suburban Hotel Co* (1867) 2 Ch App 737; *Re Joint Stock Coal Co* (1869) LR 8 Eq 146; *Re New Zealand Quartz Crushing Co* [1873] WN 174.
- 23 *Re Pioneers of Mashonaland Syndicate* [1893] 1 Ch 731. Since 23 June 1980 (ie the date of commencement of the Companies Act 1980 s 2 (repealed)) it has been illegal to allot shares at a discount: see COMPANIES vol 15 (2009) PARA 1111.
- 24 *Re Medical Battery Co* [1894] 1 Ch 444; cf *Re London and Provincial Starch Co, ex p Adams* (1867) 16 LT 474 (deceit in relation to creditor's petition).
- 25 As to special resolutions see COMPANIES vol 14 (2009) PARA 614.
- 26 *Re Anglo-Continental Produce Co Ltd* [1939] 1 All ER 99 at 102; *Re Surrey Garden Village Trust, Re Addington Smallholders Ltd* [1964] 3 All ER 962, [1965] 1 WLR 974. However, as to conduct unfairly prejudicial to members see COMPANIES vol 14 (2009) PARA 466; and see also para 480 post.
- 27 See the Insolvency Act 1986 s 125(2); and paras 454 et seq, 477 post. See also *Re a Company (No 002567 of 1982)* [1983] 2 All ER 854, [1983] 1 WLR 927; *Re a Company (No 003843 of 1986)* [1987] BCLC 562, [1987] BCC 624; *Fuller v Cyracuse Ltd* [2001] 1 BCLC 187, [2001] BCC 806, ChD; *CVC/Opportunity Equity Partners Ltd v Demarco Almeida* [2002] UKPC 16, [2002] 2 BCLC 108, [2002] BCC 684 (Cayman Islands company; under the law of the Cayman Islands there was no equivalent to the Companies Act 1985 s 459). As to possible alternative remedies see COMPANIES vol 14 (2009) PARA 466 et seq.
- 28 *Re Fildes Bros Ltd* [1970] 1 All ER 923, [1970] 1 WLR 592.
- 29 *Re Millennium Advanced Technology Ltd* [2004] EWHC 711 (Ch), [2004] 1 WLR 2177.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/450. Presenting the petition; who may petition.

(3) PETITION

(i) Petitioners; Effect of Petitioning

450. Presenting the petition; who may petition.

An application to the court for the winding up of a company is by petition¹, which may be presented either by the company itself or by the directors², or by any creditor or creditors, including any contingent or prospective creditor or creditors³, or by any contributory or contributories⁴ including a minor⁵, or by a justices' chief executive⁶; or by a liquidator⁷ or temporary administrator⁸; or by all or any of those parties, together or separately⁹; or by the official receiver in certain cases¹⁰; or by the Secretary of State in the cases where he is entitled¹¹ to present a petition¹²; or, in the case of a company which is a charity, by the Attorney General¹³; or by the Financial Services Authority in the cases where it is entitled to present a petition¹⁴; or by the supervisor of a voluntary arrangement¹⁵ or the administrator¹⁶ or administrative receiver¹⁷ of the company.

A company will be granted an injunction to restrain the presentation of a petition only if there is evidence that it would be an abuse of the process¹⁸. If a petitioner has sufficient ground for petitioning, his motive (for example, malice) is no bar¹⁹. A claim for damages will lie for presenting a winding-up petition maliciously and without reasonable cause, even though no special damage can be proved²⁰.

Petitioning to wind up a company for not satisfying a judgment debt is not enforcing the judgment but is a different mode of recovering the debt²¹. No true lis exists between the parties in a petition to wind up the company; the petitioner is invoking class rights on behalf of himself and all others of his class²². The liquidation of an insolvent company is a process of collective enforcement of debts for the benefit of the general body of creditors²³.

One petition may not be issued with respect to more than one company. A separate petition is required for each company²⁴. The leave of the court is necessary for the presentation of a winding-up petition founded on a judgment or order of a court other than a county court if inability to satisfy the judgment or order is due to the performance by any person of relevant service in Her Majesty's forces²⁵.

A winding-up petition presented on the ground that a moratorium for the company²⁶ has come to an end and no approved voluntary arrangement²⁷ has effect in relation to the company²⁸ may only be presented by one or more creditors²⁹.

1 Insolvency Act 1986 s 124(1). The proceedings under a winding-up petition are not an 'action' within what is now the Supreme Court Act 1981 s 151(1): *Re Simpkin Marshall Ltd* [1959] Ch 229, [1958] 3 All ER 611. No winding-up order may be made on an application, rather than a petition, made by administrators of the company: *Re Brooke Marine Ltd* [1988] BCLC 546. As to the withdrawal of the petition see para 467 post.

2 An individual director has no right to present a petition in his capacity as such; all the directors, not merely a majority of them, must petition: see *Re Instrumentation Electrical Services Ltd* [1988] BCLC 550, 4 BCC 301 (decided under the analogous provision in the Insolvency Act 1986 s 9 (as amended) (see para 148 ante)). The right of directors to present a petition is a statutory right and it would seem that the company's articles of association need not expressly confer on them such a power: see para 454 text and note 2 post; and cf *Re Emmadart Ltd* [1979] Ch 540, [1979] 1 All ER 599.

3 See para 451 post. As to the meaning of 'contingent creditor' see *Re William Hockley Ltd* [1962] 2 All ER 111, [1962] 1 WLR 555 (judgment creditor whose debt was paid off by payment in full to sheriff not a contingent creditor; possibility of defeasance not sufficient). See also *Securum Finance Ltd v Camswell Ltd* [1994] BCC 434; *Re a Company (No 003028 of 1987)* [1988] BCLC 282, 3 BCC 575; *County Bookshops Ltd v Grove* [2002] EWHC 1160 (Ch), [2003] 1 BCLC 479. A petition may be presented on the basis of a debt which is unascertained, such as an order for costs or a judgment for unliquidated damages: *Tottenham Hotspur plc v Edennotte plc* [1995] 1 BCLC 65, [1994] BCC 681. Where a creditor petitions on the basis of a debt which is not presently payable, and hence which is contingent, future or unascertained, although such a debt establishes the locus standi of the petitioner to petition, if the ground of the winding up is inability to pay debts, the court will be unable to infer insolvency on the basis of a debt which, ex hypothesi, is not presently due or is unascertained, and hence a winding-up order will be made only if there is independent evidence of insolvency. Where a creditor has an undisputed claim for unliquidated damages for more than a merely nominal amount, advertisement will not be restrained, and the question of the company's solvency can be left to the hearing of the petition: *Re Dollar Land Holdings plc* [1994] 1 BCLC 404, [1993] BCC 823.

4 As to petitions by contributories see para 454 et seq post.

5 *Dennison v Jeffs* [1896] 1 Ch 611 at 617. As to the rights of minors to repudiate membership see para 707 post; and COMPANIES vol 14 (2009) PARA 330. As to the commencement of proceedings on behalf of minors generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 1409 et seq.

6 Ie in exercise of the power conferred by the Magistrates' Courts Act 1980 s 87A (as added) (enforcement of fines imposed on companies): see the Insolvency Act 1986 s 124(1) (amended by the Criminal Justice Act 1988 s 62(2)(b); and the Access to Justice Act 1999 s 90(1), Sch 13 para 133). See MAGISTRATES vol 29(2) (Reissue) para 869. As from a day to be appointed, the power to present a petition under the Magistrates' Courts Act 1980 s 87A (as added) is transferred from the justices' chief executive to the designated officer for a magistrates' court: Insolvency Act 1986 s 124(1) (as so amended; prospectively further amended by the Courts Act 2003 s 109(1), Sch 8 para 294). At the date at which this volume states the law no such day had been appointed.

7 Ie within the meaning of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 2(b) (which provides that 'liquidator' means any person or body (ie a liquidator, a supervisor of a voluntary arrangement, an administrator, an official receiver, a trustee or a judicial factor) whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs: see art 2(b), Annex C): Insolvency Act 1986 s 124(1) (amended by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 8). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

8 Ie within the meaning of the European Regulation on Insolvency Proceedings art 38 (which provides that where the court of a member state which has jurisdiction pursuant to art 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator is empowered to request any measures to secure and preserve any of the debtor's assets situated in another member state, provided for under the law of that state, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings): Insolvency Act 1986 s 124(1) (as amended: see notes 6, 7 supra).

9 Ibid s 124(1) (as amended: see notes 6, 7 supra). If the petitioner dies before the hearing, an order for the carrying on of proceedings may be made in favour of his personal representatives: *Re Dynevor Duffryn Collieries Co* [1878] WN 199; *Re Commercial Bank of London* [1888] WN 214 (order for winding up made in ignorance of the petitioner's death). A petitioner may not present a petition in a name other than his own; but, provided that the named petitioner is not a non-existent person and no prejudice will be caused, leave to amend the petition to show the petitioner's correct name will be granted: *Re Goldthorpe & Lacey Ltd* (1987) 3 BCC 595, CA.

10 See para 460 post. As to the official receiver see para 503 et seq post.

11 Ie under the Insolvency Act 1986 s 122(1)(b) or s 122(1)(c) (see para 444 ante), or s 124A (as added and amended) (see para 444 ante). As to the Secretary of State see para 11 note 10 ante.

12 See ibid s 124(4) (as amended) and para 444 ante.

13 See the Charities Act 1993 s 63(1); and CHARITIES vol 8 (2010) PARA 234.

14 See para 444 ante.

15 See paras 105, 132 ante. As to the procedure on a petition presented by the supervisor see para 459 post.

16 See para 163 ante. As to the procedure on a petition presented by the administrator see para 459 post.

17 See para 396 ante.

18 *Bryanston Finance Ltd v de Vries (No 2)* [1976] Ch 63, [1976] 1 All ER 25, CA. See also para 452 post. It is not an abuse of the winding-up process for a petition to be presented by a creditor against an insolvent company so that the creditor may exercise control over events and prevent the disposal of the company's assets piecemeal, even though the creditor does not intend to press for a winding-up order because he believes that an alternative remedy, such as a scheme, will eventually be available and be more likely to be in the interests of creditors as a class: *Re Esal (Commodities) Ltd* [1985] BCLC 450. The use of a petition to exert pressure to settle the costs of a claim when liability in that respect is as yet unquantified is not justifiable: *Re a Company (No 004601 of 1997)* [1998] 2 BCLC 111, ChD.

19 *Bryanston Finance Ltd v de Vries (No 2)* [1976] Ch 63, [1976] 1 All ER 25, CA; cf *Re a Company (No 001573 of 1983)* [1983] BCLC 492, [1983] 1 BCC 937.

20 *Quartz Hill Consolidated Gold Mining Co v Eyre* (1883) 11 QBD 674, CA. See further TORT vol 97 (2010) PARAS 661-663.

21 *Re Parker, Davies and Hughes Ltd* [1953] 2 All ER 1158, [1953] 1 WLR 1349 (civil aid certificate for action on contract did not cover subsequent proceedings to wind up debtor company). Note that the effect of the actual decision in this case has since been nullified by an alteration of the regulations relating to legal aid (see *Re Peretz Co Ltd* [1965] Ch 200, [1964] 3 All ER 633). See also *Re Lines Bros Ltd* [1983] Ch 1 at 20, [1982] 2 All ER 183 at 195, CA, per Brightman LJ; *Re International Tin Council* [1987] Ch 419, [1987] 1 All ER 890 (affd [1989] Ch 309, [1988] 3 All ER 257, CA).

22 *Re a Company (No 001573 of 1983)* [1983] BCLC 492, [1983] 1 BCC 937; and see *Re Lines Bros Ltd* [1983] Ch 1, [1982] 2 All ER 183, CA; *Re Esal (Commodities) Ltd* [1985] BCLC 450.

23 See *Re Lines Bros Ltd* [1983] Ch 1 at 20, [1982] 2 All ER 183 at 195, CA, per Brightman LJ.

24 *Re a Company* [1984] BCLC 307.

25 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 2(1), (4), 3(1), (9); the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 3, 9; and ARMED FORCES vol 2(2) (Reissue) paras 81, 83. For the meaning of 'relevant service' see ARMED FORCES vol 2(2) (Reissue) para 79.

26 Ie a moratorium under the Insolvency Act 1986 s 1A, Sch A1 para 1 (as added): see para 73 et seq ante.

27 Ie no voluntary arrangement approved under ibid Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

28 Ie under ibid s 122(1)(fa) (as added) (see para 444 ante).

29 Ibid s 124(3A) (added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 7).

UPDATE

438-938 Winding Up by the Court

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450 Presenting the petition; who may petition

TEXT AND NOTES 1-17--A winding-up petition may also be presented by the Regulator of community interest companies in a case falling within the Companies (Audit, Investigations and Community Enterprise) Act 2004 s 50 (see COMPANIES vol 14 (2009) PARA 100): 1986 Act s 124(4A) (added by the 2004 Act s 50(3)). As to community interest companies generally see COMPANIES vol 14 (2009) PARA 82 et seq).

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 4--See *Charit-Email Technology Partnership LLP v Vermillion International Investments Ltd* [2009] EWHC 388 (Ch), [2009] BPIR 762, [2009] All ER (D) 95 (Mar) (person denying contributory status not entitled to petition).

NOTE 3--See also *Farlin Timbers PTE Ltd v Jubilee International Inc* [2005] All ER (D) 230 (Jul).

NOTE 7--EC Council Regulation 1346/2000 Annex C amended in relation to the UK: EC Regulation 603/2005 (OJ L100, 20.4.2005, p 1). Provisional liquidators are added to the persons or bodies referred to in art 2 para (b).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/451. Who may petition as creditor.

451. Who may petition as creditor.

The following persons are entitled to petition as creditors:

- 885 (1) the assignee of a debt, if the assignment is not made while the creditor's petition is pending¹;
- 886 (2) the equitable assignee of part of a debt²;
- 887 (3) the executor of a creditor, even before probate³;
- 888 (4) a creditor in respect of a debt incurred by voluntary liquidators⁴;
- 889 (5) a secured creditor⁵;
- 890 (6) a judgment creditor⁶;
- 891 (7) the holder of a debenture, including a bearer debenture⁷;
- 892 (8) the holder of an investment bond (of an insolvent company) which has not yet matured for payment⁸; and
- 893 (9) in general any creditor whose debt is not genuinely disputed by the company on substantial grounds⁹.

A rating authority is a creditor for rates, even though it cannot sue for them, and may present a petition¹⁰.

A contingent¹¹ or prospective creditor may petition¹².

There is nothing in the Insolvency Act 1986 requiring the debt to be of any minimum amount except in the case of a statutory demand¹³.

1 *Re London and Birmingham Flint Glass and Alkali Co Ltd, ex p Wright* (1859) 1 De GF & J 257; *Re Paris Skating Rink Co* (1877) 5 ChD 959, CA; *Perak Pioneer Ltd v Petrolam Nasional Bhd* [1986] AC 849, [1986] 3 WLR 105, PC.

2 *Re Steel Wing Co Ltd* [1921] 1 Ch 349; *Re Montgomery Moore Ship Collision Doors Syndicate Ltd* (1903) 72 LJ Ch 624. A petition presented by a creditor who holds the debt as bare trustee, where the beneficiary opposes the petition, is likely to fail; but the same does not apply where the debt is subject to a crystallised floating charge and is opposed by the chargee, where the purpose of the petition is to investigate the circumstances surrounding the grant of the charge: *Bell Group Finance (Pty) Ltd (in liquidation) v Bell Group (UK) Holdings Ltd* [1996] 1 BCLC 304, [1996] BCC 505.

3 *Re Masonic and General Life Assurance Co* (1885) 32 ChD 373. Probate must be obtained before an order is made: *Re Masonic and General Life Assurance Co* supra.

4 *Re Bank of South Australia (No 2)* [1895] 1 Ch 578, CA.

5 *Re Portsmouth Borough (Kingston, Fratton and Southsea) Tramways Co* [1892] 2 Ch 362; cf *Moor v Anglo-Italian Bank* (1879) 10 ChD 681; *Re Cambrian Mining Co Ltd, ex p Fell* (1881) 50 LJ Ch 836.

6 *Re United Stock Exchange Ltd* (1884) 51 LT 687. The judgment is not conclusive evidence: *Re United Stock Exchange Ltd* supra; cf *Bowes v Directors of Hope Life and Insurance Guarantee Co* (1865) 11 HL Cas 389. If there is a genuine cross-claim, the order may be refused as a matter of discretion: see para 477 note 1 post. Where a company which was solvent and had considerable resources had delayed in paying a judgment debt, and the creditor presented a petition, the court refused to grant an injunction restraining the creditor from proceeding with the petition on the ground that in the circumstances the presentation of the petition had been justified: *Re a Company* (1950) 94 Sol Jo 369. See also para 450 text and note 18 ante.

7 *Re Olathe Silver Mining Co* (1884) 27 ChD 278; *Re Uruguay Central and Hygueritas Rly Co of Monte Video* (1879) 11 ChD 372. As to the holder of debenture stock see para 452 post.

8 *Re British Equitable Bond and Mortgage Corp Ltd* [1910] 1 Ch 574.

9 Even if the company has considerable resources but fails or refuses an admitted debt: *Cornhill Insurance plc v Improvement Services Ltd* [1986] 1 WLR 114, [1986] BCLC 26. See also para 452 post. The Commissioners of Customs and Excise may petition on the basis of assessments of value added tax notwithstanding that an appeal against such assessments is pending: *Re D & D Marketing (UK) Ltd and D & D Marketing (a firm)* [2002] EWHC 660 (Ch), [2003] BPIR 539. As to the Commissioners of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 et seq.

10 *Re North Bucks Furniture Depositories Ltd* [1939] Ch 690, [1939] 2 All ER 549; *Re McGreavy (otherwise McGreavey), ex p McGreavy v Benfleet UDC* [1950] Ch 269, [1950] 1 All ER 442, CA. See RATING AND COUNCIL TAX.

11 As to who is a contingent creditor see *Re William Hockley Ltd* [1962] 2 All ER 111, [1962] 1 WLR 555; and para 450 note 3 ante.

12 Insolvency Act 1986 s 124(1). A person claiming unliquidated damages may petition as a prospective creditor: see *Re a Company* [1974] 1 All ER 256 at 260, [1973] 1 WLR 1566 at 1570 per Megarry J; *Holt Southey Ltd v Catnic Components Ltd* [1978] 2 All ER 276, [1978] 1 WLR 630; cf *Re Pen-y-van Colliery Co* (1877) 6 ChD 477; *Re Gold Hill Mines* (1883) 23 ChD 210 at 213, CA.

13 See paras 446-447 ante. However, under the corresponding provisions of the earlier Acts, the court did not as a rule make a winding-up order in respect of a debt or debts less than the amount required for a statutory demand: *Re Herbert Standring & Co Ltd* (1895) 39 Sol Jo 603; *Re Fancy Dress Balls Co Ltd* (1899) 43 Sol Jo 657; *Re Milford Docks Co, Lister's Petition* (1883) 23 ChD 292 at 295; *Re Industrial Insurance Association Ltd* [1910] WN 245. An order will be made where the company can never recommence business. If the order is made, it is usually without costs (*Re Herbert Standring & Co Ltd* supra); but, where the creditor is met with defiance, as when the company refuses to make calls, a winding-up order, with costs, will be made (*Re World Industrial Bank Ltd* [1909] WN 148). An order with costs was made when the petition was supported by other creditors, making an aggregate indebtedness of over £50 (the then minimum amount required for a statutory demand): *Re Leyton and Walthamstow Cycle Co Ltd* (1901) 50 WR 93. In *Re Yates Collieries and Limeworks Co* [1883] WN 171, North J held that a creditor for less than £50 had established that the company was unable to pay its debts by proving that he was a judgment creditor, and that he had not issued execution on his judgment because the company's solicitors had informed him that a mortgagee had taken possession of all its property.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/452. Who may not petition.

452. Who may not petition.

A winding-up order cannot be obtained by a judgment creditor who has attached a debt due from the company to his judgment debtor¹ (his proper course being to obtain judgment in a claim against the company and then petition²), or by a surety in respect of a mortgage debt, or another company which has assigned the equity of redemption to the company petitioned against on the terms that the latter indemnifies the former³.

The holder of debenture stock constituted by a trust deed is not a creditor in respect of interest for the payment of which there is no direct covenant by the company with himself⁴.

A winding-up order ought not to be made on the petition of a creditor who has so charged or dealt with his debt as to pass the real interest in it to another person⁵.

A winding-up order may not be made on a debt which is disputed in good faith by the company⁶; the court must see that the dispute is based on a substantial ground⁷. A dispute as to the precise amount due is not a sufficient answer to the petition⁸. If there is a genuine dispute, the petition may be dismissed or stayed⁹, and an injunction may be granted restraining the advertisement or publicising of the petition¹⁰. Where a petition has not been presented but is threatened in respect of a disputed debt, an injunction may be granted restraining the presentation¹¹. If the debt is not genuinely disputed on some substantial ground, the court may decide this question on the petition¹², but it will usually dismiss a petition founded on a disputed debt and leave the dispute to be decided in an action (or claim)¹³. The court may order the amount of the alleged debt to be paid into court¹⁴. Where the judgment for the debt on which the petition is presented is reversed before the hearing, the petition may be dismissed¹⁵. It is an abuse of the process for a petition to be presented on the basis of an unascertained debt which has never been demanded and for which no opportunity to repay has been given¹⁶.

If the company has a genuine cross-claim against the petitioner which, if established, would exceed the petitioner's debt, the court may dismiss the petition¹⁷.

There are four main processes which may be initiated by a company which wishes to defend a petition or threatened petition:

- 894 (1) if the company has notice that a petition will or may be presented against it, the company may apply to restrain presentation of the petition¹⁸;
- 895 (2) if a petition has been presented against a company, but has not been advertised, the company may apply to restrain advertisement, which application is usually coupled with an application to strike out the petition¹⁹;
- 896 (3) even if the petition has been advertised, the company may apply to strike out the petition as an abuse of process prior to the hearing of the petition²⁰; and
- 897 (4) the company may defend the petition itself when it is heard²¹.

1 *Re Combined Weighing and Advertising Machine Co* (1889) 43 ChD 99, CA.

2 *Pritchett v English and Colonial Syndicate* [1899] 2 QB 428, CA.

3 *Re Law Courts Chambers Co Ltd* (1889) 61 LT 669.

4 *Re Dunderland Iron Ore Co Ltd* [1909] 1 Ch 446.

5 *Re Pentalta Exploration Co* [1898] WN 55. This difficulty may be surmounted by joining the mortgagee as a co-petitioner: *Re Bartitsu Light Cure Institute Ltd* (1909) Times, 13 January.

6 *Re Gold Hill Mines* (1883) 23 ChD 210, CA; *Re Brighton Club and Norfolk Hotel Co Ltd* (1865) 35 Beav 204; *Re London Wharfing and Warehousing Co Ltd* (1865) 35 Beav 37; *Re Lympne Investments Ltd* [1972] 2 All ER 385, [1972] 1 WLR 523; *Re a Company* [1984] 3 All ER 78, [1984] 1 WLR 1090; *Re a Company* [1985] BCLC 37; cf *Re Russian and English Bank* [1932] 1 Ch 663. See also *Re a Company (No 001946 of 1991)*, ex p *Fin Soft Holding SA* [1991] BCLC 737 (where Harman J stated that the essence of the test was whether the dispute was substantial, the good or bad faith of the company in putting forward the defence being irrelevant). It is insufficient for a 'defence' to be honestly put forward if in fact there is no substance in it: *Taylor's Industrial Flooring Ltd v M & H Plant Hire (Manchester) Ltd* [1990] BCLC 216, sub nom *Re Taylor's Industrial Flooring Ltd* [1990] BCC 44, CA.

7 *Re King's Cross Industrial Dwellings Co* (1870) LR 11 Eq 149; *Re Imperial Hydropathic Hotel Co, Blackpool Ltd* (1882) 49 LT 147, CA; *Re Great Britain Mutual Life Assurance Society* (1880) 16 ChD 246, CA; *Re a Company (No 006685 of 1996)* [1997] 1 BCLC 639, [1997] BCC 830, ChD. The fact that unconditional leave to defend the claim relating to the debt has been given is not conclusive: *Re Welsh Brick Industries Ltd* [1946] 2 All ER 197, CA. It is normally insufficient for a company attempting to restrain advertisement of a petition to show that further investigations might reveal a bona fide and substantial dispute, but the position may be different where a reinsurance company has been refused its contractual entitlement to inspect the reinsured's records: *Re a Company (No 008725 of 1991 and No 008727 of 1991)* [1992] BCLC 633.

8 *Re Tweeds Garages Ltd* [1962] Ch 406, [1962] 1 All ER 121; *Re RA Foulds Ltd* (1986) 2 BCC 99, 269; *Re a Company (No 008122 of 1989)*, ex p *Trans Continental Insurance Services Ltd* [1990] BCLC 697.

9 *Re Gold Hill Mines* (1883) 23 ChD 210, CA; *Re Compagnie Générale des Asphaltes de Paris*, ex p *Neuchatel Asphalte Co* [1883] WN 17; *Re Rhodesian Properties Ltd* (1901) 45 Sol Jo 580. Cf *Re Douglas Griggs Engineering Ltd* [1963] Ch 19, [1962] 1 All ER 498 (no answer for company to allege disputed claim against petitioning judgment creditor).

10 *Re a Company* [1984] 2 Ch 349; *Mann v Goldstein* [1968] 2 All ER 769, [1968] 1 WLR 1901; *Re a Company* [1986] BCLC 127; *James Dolman & Co Ltd v Pedley* [2003] EWCA Civ 1686, [2004] BCC 504. See also *Re Euro Hotel (Belgravia) Ltd* [1975] 3 All ER 1075; *Holt Southey Ltd v Catnic Components Ltd* [1978] 2 All ER 276, [1978] 1 WLR 630. The application for an injunction restraining advertisement or presentation of a petition must be made to a judge and not to the registrar: see para 1055 post. The rule that a disputed debt cannot form the basis of a winding-up petition is a rule of practice only: *Re Claybridge Shipping Co SA* [1997] 1 BCLC 572, CA. Hence if the petitioner is likely to be deprived of any remedy if the petition is struck out, or if there is a danger of assets being removed from the jurisdiction, the court may allow a petition founded on a disputed debt to proceed: *Re Claybridge Shipping Co SA* supra. See also *Alipour v Ary* [1997] 1 WLR 534, [1997] 1 BCLC 557, CA (a contributory's petition); *Capital Landfill (Restoration) Ltd v William Stockler & Co (a firm)* (5 September 1991, unreported), CA (petition founded on a disputed debt was allowed to proceed where a liquidator might set aside a floating charge over the company's assets).

11 *Cadiz Waterworks Co v Barnett* (1874) LR 19 Eq 182; *Niger Merchants Co v Capper* (1877) 18 ChD 557n; *Cercle Restaurant Castiglione Co v Lavery* (1881) 18 ChD 555; *New Travellers' Chambers Ltd v Cheese and Green* (1894) 70 LT 271; *Merchant Banking Co of London v Hough* [1874] WN 230; *John Brown & Co v Keeble* [1879] WN 173; *Stonegate Securities Ltd v Gregory* [1980] Ch 576, [1980] 1 All ER 241, CA. The principles as to the grant of interim injunctions set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, [1975] 1 All ER 504, HL, do not apply to applications for injunctions to restrain presentation of a winding-up petition: *Bryanston Finance Ltd v de Vries (No 2)* [1976] Ch 63, [1976] 1 All ER 25, CA.

12 *Re King's Cross Industrial Dwellings Co* (1870) LR 11 Eq 149; *Re Great Britain Mutual Life Assurance Society* (1880) 16 ChD 246, CA; *Re Imperial Silver Quarries Co Ltd* (1868) 16 WR 1220; and see *Landauer & Co v Alexander & Co* 1919 SC 492, Ct of Sess.

13 *Re London and Paris Banking Corpn* (1875) LR 19 Eq 444; *Re a Company* [1894] 2 Ch 349; *Re Lympne Investments Ltd* [1972] 2 All ER 385, [1972] 1 WLR 523; cf *Re Imperial Guardian Life Assurance Society* (1869) LR 9 Eq 447; *Re Inventors' Association Ltd* (1865) 2 Drew & Sm 553; *Re Catholic Publishing and Bookselling Co* (1864) 2 De GJ & Sm 116; *Landauer & Co v Alexander & Co* 1919 SC 492; *Re a Company* [1984] 3 All ER 78, [1984] 1 WLR 1090; *Re a Company* [1985] BCLC 37; and see further note 10 supra. It is improper to stand over a winding-up petition presented by a creditor for a long or indefinite period: *Re Boston Timber Fabrications Ltd* [1984] BCLC 328, 1 BCC 52, CA. See further para 478 post.

14 *Re Compagnie Générale des Asphaltes de Paris*, ex p *Neuchatel Asphalte Co* [1883] WN 17.

15 *Re Anglo-Bavarian Steel Ball Co* [1899] WN 80. In *Re Amalgamated Properties of Rhodesia (1913) Ltd* [1917] 2 Ch 115, CA, Sargant J made a winding-up order founded on a failure to comply with a statutory demand for a judgment debt in respect of which notice of appeal had been given after the expiration of the

period of three weeks (see para 446 ante), but directed the order to lie in the registrar's office to provide time for the company to secure the judgment debt; the order was varied on appeal by consent but its correctness was not doubted.

16 *Re a Company (No 001573 of 1983)* [1983] BCLC 492, 1 BCC 937.

17 *Re Portman Provincial Cinemas Ltd* (1964) 108 Sol Jo 581, CA; and see *Re LHF Wools Ltd* [1970] Ch 27, [1969] 3 All ER 882, CA (where the petition was stayed in a case where the company had ceased trading and had no other asset apart from the cross-claim); *Re FSA Business Software Ltd* [1990] BCLC 825, [1990] BCC 465; *Tottenham Hotspur plc v Edennote plc* [1995] 1 BCLC 65, [1994] BCC 681; *Re Bayoil SA, Seawind Tankers Corp v Bayoil SA* [1999] 1 All ER 374 [1999] 1 BCLC 62, CA; *Montgomery v Wanda Modes Ltd* [2002] 1 BCLC 289, [2000] BPIR 457, ChD; and note 21 infra; but see also note 13 supra. According to obiter dicta of Nourse LJ in *Re Bayoil SA, Seawind Tankers Corp v Bayoil SA* supra, it is a further requirement that the company has not reasonably been able to litigate the cross-claim; but this requirement was doubted and not applied in *Montgomery v Wanda Modes Ltd* supra. Where the company relies on a cross-claim as a ground for seeking dismissal of a winding-up petition, that cross-claim might be neutralised by the petitioner raising a further claim against the company (beyond the claim raised in the petition) but only if there is no realistic defence to this reverse cross-claim: *Montgomery v Wanda Modes Ltd* supra. Where due to the precipitate action of the petitioner a petition has been advertised, the only remedy available to the court is to strike out the petition: *Re a Company (No 007020 of 1996)* [1998] 2 BCLC 54. The court must be certain that there is a solid cross-claim of an amount at least sufficient to reduce the debt below the insolvency limit: *Greenacre Publishing Group Ltd v Manson Group* [2000] BCC 11, (1998) Times, 17 December, ChD.

18 The petitioner will be restrained from presenting a petition only on the ground of abuse of process, hence usually that there is a bona fide and substantial dispute as to the debt on which the petition is based.

An application to restrain presentation of a winding-up petition must be made by originating application to the judge: see *Practice Direction--Insolvency Proceedings* para 5.1(3).

A statutory demand is a threat to present a winding-up petition for these purposes: *Stonegate Securities Ltd v Gregory* [1980] Ch 576 at 588, [1980] 1 All ER 241 at 249, CA, per Goff LJ.

19 The usual ground for restraining advertisement will be that the petition is an abuse of process, hence that there is a bona fide and substantial dispute as to the debt; but, by reason of the Insolvency Rules 1986, SI 1986/1925, r 4.11(1), the court retains an exceptional jurisdiction to order that the petition should not be advertised: see para 462 post. The court has jurisdiction to grant a mandatory injunction ordering that an advertisement already placed with the London Gazette, but not yet published, should be withdrawn: *Re a Company (No 001448 of 1989)* [1989] BCLC 715, 5 BCC 706.

20 *Re a Company (No 003079 of 1990)* [1991] BCLC 235, [1991] BCC 683; *Re CDPD (No 001889 of 1975)* [1975] CLY 322. The appropriate test is whether, at the hearing of the application to restrain advertisement and strike out, the court can see that the petition would be bound to be dismissed at the hearing of the petition itself: *Re a Company (No 003079 of 1990)* supra at 237 and 685 per Ferris J; *Greenacre Publishing Group Ltd v Manson Group* [2000] BCC 11, (1998) Times, 17 December, ChD. As a matter of discretion, where a company has already unsuccessfully applied to restrain presentation of a petition, it will not generally be permitted to apply to restrain advertisement where the latter application is in essence a repeat of the first application: *Re Portedge Ltd* [1997] BCC 23, sub nom *RWH Enterprises Ltd v Portedge Ltd* [1998] BCC 556, CA. An application to restrain advertisement can be made without notice, but on such an application the applicant company should disclose its financial position: *Re Portedge Ltd* supra. See also *Re MCI Worldcom Ltd* [2002] EWHC 2436 (Ch), [2003] BPIR 667.

21 The presentation of a petition to wind up a company based on an undisputed debt is not an abuse of the process of the court: *Re a Company (No 006273 of 1992)* [1993] BCLC 131, [1992] BCC 794, ChD (such a petition was not presented for an improper purpose, eg to put pressure on the company to pay a debt which was disputed; but was for a purpose which was entirely proper, which was to put pressure on the company to pay a debt which was not disputed). The company need not, however, necessarily show abuse of process to secure the dismissal of the petition. Thus where the company has a cross-claim which exceeds the amount of the petition debt, the court may dismiss the petition even though the petition debt is presently payable and there is no abuse of process: see the text and note 17 supra. The court may further restrain presentation of a petition or restrain advertisement on the ground of such a cross-claim: *Orion Media Marketing Ltd v Media Brook Ltd* [2002] 1 BCLC 184, [2003] BPIR 474, ChD (restraint of the presentation of a petition, where the principles in *Re Bayoil SA, Seawind Tankers Corp v Bayoil SA* [1999] 1 All ER 374 [1999] 1 BCLC 62, CA, were held applicable in that context); and see also *Re Ringinfo Ltd* [2002] 1 BCLC 210, [2001] All ER (D) 309 (May); and cf *Re a Company (No 009080 of 1992)* [1993] BCLC 269, ChD. In this context, dicta to the contrary (in *Re a Company (No 006273 of 1992)* supra) are of doubtful authority. Where the counterclaim is a set-off, the court will treat the petition as if there were a bona fide and substantial dispute as to the petition debt: *McDonald's Restaurants Ltd v Urbandivide Co Ltd* [1994] 1 BCLC 306. The court may in exceptional circumstances refuse to entertain a winding-up petition where a cheque has been dishonoured: *Re a Company (No 0010656 of 1990)* [1991] BCLC 464 (petition struck out; the company disputed its liability on the cheque on substantial grounds

and there was no evidence of the company's financial position which would indicate that it was insolvent; it was held to be more appropriate that the matter should proceed by ordinary action). Even if there is a bona fide and substantial dispute as to a very substantial part of the petition debt, then, provided that the undisputed amount exceeds £750, the petitioner is entitled to proceed with the petition: *Re a Company (No 008122 of 1989), ex p Trans Continental Insurance Services Ltd* [1990] BCLC 697; *Re Pendigo Ltd* [1996] 2 BCLC 64, [1996] BCC 608.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

452 Who may not petition

NOTE 10--See also *Farlin Timbers PTE Ltd v Jubilee International Inc* [2005] All ER (D) 230 (Jul).

NOTE 17--See also *Bolsover DC v Dennis Rye Ltd* [2009] EWCA Civ 372, [2009] 4 All ER 1140.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/453. Effect of voluntary winding up on creditors.

453. Effect of voluntary winding up on creditors.

The voluntary winding up of a company¹ does not bar the right of any creditor to have it wound up by the court², whether his debt accrued before or after the commencement of the winding up³. As between himself and the company, the creditor is entitled to a compulsory winding-up order as a matter of right⁴, but as between that creditor and other creditors the court will consider the wishes of creditors generally⁵. Accordingly, in the first instance the petition should merely show the existence of the liquidation to explain why it is addressed to the liquidator and should not go further into the circumstances of the liquidation, although counsel appearing for the petitioner should be instructed on the basis that further matters may arise at the hearing⁶. If the wishes of creditors generally are that the petition should be dismissed, it will normally be dismissed without costs if the petitioner creditor has acted reasonably in presenting it⁷.

1 As to voluntary winding up generally see para 939 et seq post.

2 Insolvency Act 1986 s 116. In the case of an application by a contributory, however, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up: s 116. See note 4 infra; and para 455 post.

3 *Re Bank of South Australia (No 2)* [1895] 1 Ch 578 at 595, CA, doubting *Re Bank of South Australia* [1894] 3 Ch 722 (where it was held that there was no jurisdiction to make a supervision order (now abolished) on the petition of a creditor whose debt was incurred after the voluntary winding up had commenced).

4 *Re James Millward & Co Ltd* [1940] Ch 333, [1940] 1 All ER 347, CA. As to the creditor's prima facie right to a winding-up order see further para 480 post.

The Companies Act 1929 s 255 (repealed), which was re-enacted by the Insolvency Act 1986 s 116, effected a change in the law as regards petitions by creditors: *Re James Millward & Co Ltd* supra. The Insolvency Act 1986 s 116 requires a petitioner to prove that his rights are prejudiced only in the case of a petition by a contributory: see para 455 post. The provision in s 124(5) (see para 458 post), that the court may not make a winding-up order unless satisfied that a voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories, is intended to apply only in the case of a petition by the official receiver: see *Re Lubin, Rosen and Associates Ltd* [1975] 1 All ER 577, [1975] 1 WLR 122. As to the official receiver see para 503 et seq post.

Under the corresponding provisions formerly in force (ie the Companies Act 1862 s 145 (repealed) and the Companies Consolidation Act 1908 s 197 (repealed), a creditor seeking a voluntary winding-up order had to allege and prove that the continuance of a voluntary winding up would be prejudicial to his rights (*Re Russell, Cordner & Co* [1891] 3 Ch 171), even where the voluntary winding-up resolution had been passed after the presentation but before the hearing of the petition (*Re New York Exchange Ltd* (1888) 39 ChD 415, CA; *Re Electrical Engineering Co Ltd* (1891) 64 LT 658; *Re Medical Battery Co* [1894] 1 Ch 444; but see *Re General Rolling Stock Co Ltd* (1865) 34 Beav 314). However, it was held that, if the general body of creditors desired a compulsory order, an existing voluntary winding up was no bar, in spite of the fact that no individual creditor showed that his rights would be prejudiced by a voluntary winding up: *Re E Bishop & Sons Ltd* [1900] 2 Ch 254; *Re Hermann Lichtenstein & Co Ltd* (1907) 23 TLR 424.

Compulsory orders were made on the application of creditors where, although the company was in voluntary liquidation, the same person had been appointed as its receiver and liquidator (*Re Medical Battery Co* supra); where a prima facie case of fraud in the conduct of the company had been established (*Re National Debenture and Assets Corpn* [1891] 2 Ch 505 at 509, 518, 521, CA), although frauds on the public in the course of its business were not sufficient (*Re Medical Battery Co* supra); where there had been great delay in conducting the voluntary liquidation (*Re Manchester Queensland Cotton Co* (1867) 16 LT 583), or it was unsatisfactory (*Re Caerphilly Colliery Co, ex p Dolling* (1875) 32 LT 15); where the company's liabilities were very great (*Re BARNED'S BANKING CO LTD* (1866) 14 LT 451); and where the resolution for voluntary liquidation was not passed in good faith (*Re AB Cycle Co Ltd* (1902) 19 TLR 84). In certain cases, where the voluntary liquidator was the shareholders' nominee, it was held that the creditors' rights would be prejudiced: *Re Medical Battery Co* supra;

Re Tramway Wheel Plant and General Foundry Co [1873] WN 160; but cf *Adebayo v Nigeria Official Receiver* [1954] 2 All ER 197, [1954] 1 WLR 681, PC; and para 458 text and note 3 post. Where the company had no assets except uncalled capital, and the voluntary liquidator would not make calls, the creditors were held to be clearly prejudiced: *Re Bank of South Australia (No 2)* [1895] 1 Ch 578 at 594-595, CA. The issuing of circulars by a shareholder with a view to inducing shareholders to pass a resolution for voluntary liquidation by misrepresenting the effect of it has been held a contempt of court where a creditor had already presented a petition: *Re Septimus Parsonage & Co* [1901] 2 Ch 424.

5 See para 480 post.

6 *Re A and N Thermo Products Ltd* [1963] 3 All ER 721, [1963] 1 WLR 1341 (questions arising on taxation of costs).

7 See the cases cited in para 482 notes 13, 19 post. However, see also *Re Riviera Pearls Ltd* [1962] 2 All ER 194n, [1962] 1 WLR 722. Cf *Re Caston Cushioning Ltd* [1955] 1 All ER 508, [1955] 1 WLR 163 (liquidator who appeared merely to resist unfounded personal attacks allowed costs though petition amended by striking out allegation against liquidator).

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/454. Petition by contributory.

454. Petition by contributory.

The statutory right of a contributory¹ to petition for the winding up of the company cannot be excluded or limited by the articles of association².

A contributory is not entitled to present a winding-up petition unless either:

- 898 (1) the number of members³ is reduced below two; or
- 899 (2) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held⁴ by him, and registered in his name, for at least six months⁵ during the 18 months⁶ before the commencement of the winding up, or have devolved on him through the death of a former holder⁷.

This does not, however, apply to a person who is liable to contribute to a company's assets in the event of its being wound up under the statutory provisions⁸ dealing with the liability of past directors and shareholders where a company has made a payment out of capital in respect of the redemption or purchase of any of its own shares and the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets is not sufficient for payment of its debts and liabilities and the expenses of the winding up⁹. Such a person may present a winding-up petition on the ground:

- 900 (a) that the company is unable to pay its debts¹⁰; or
- 901 (b) that it is just and equitable that the company should be wound up¹¹,

and, unless the person is also a contributory otherwise than under those provisions, he may not in his character as contributory petition on any other ground¹².

A petition may be presented by a person who, although not registered, has obtained a judgment ordering the company to allot him shares and register him as a shareholder¹³, or by the holder of scrip certificates entitling the holder to be a shareholder¹⁴, or by an original allottee of shares notwithstanding that his name is not on the register of members¹⁵, or by a person who has an enforceable agreement to take shares fraudulently registered in another's name¹⁶. Where, on a contributory's petition, the petitioner's status as a contributory is disputed, the court will consider all the circumstances, including the likelihood of damage to the company if the petition is not dismissed, in determining whether to require the petitioner to seek to establish his status as contributory outside the petition¹⁷.

An injunction may be granted to restrain a contributory from presenting a petition if the presentation of the petition would constitute an abuse of the process of the court¹⁸.

1 As to the right to petition see para 450 ante. For the meaning of 'contributory' see para 703 post.

2 *Re Peveril Gold Mines Ltd* [1898] 1 Ch 122, CA; and see *Payne v Cork Co Ltd* [1900] 1 Ch 308 at 315.

3 For the meaning of 'member' see para 72 note 9 ante. Where a company has only ever had one member, the number of members can never be reduced below two: *Re Pimlico Capital Ltd, TFB Mortgages Ltd v Pimlico Capital Ltd* [2002] EWHC 878 (Ch), [2002] 2 BCLC 544.

4 This means that the name of the contributory is registered as that of the holder of shares: *Re Wala Wynaad Indian Gold Mining Co* (1882) 21 ChD 849; cf *Re Positive Government Security Life Assurance Co* [1877] WN 23.

5 See *Re Gattopardo Ltd* [1969] 2 All ER 344, [1969] 1 WLR 619, CA (where the petitioner, who had not been registered as a shareholder for more than six months although a court order entitling her to be registered had been made more than six months previously, was held to have no locus standi to present a petition); *Re Pimlico Capital Ltd*, *TFB Mortgages Ltd v Pimlico Capital Ltd* [2002] EWHC 878 (Ch), [2002] 2 BCLC 544.

6 This wording covers the case of a B list contributory: see para 722 post.

7 Insolvency Act 1986 s 124(2). Section 124(2) does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. The personal representative of a deceased shareholder is a contributory for this purpose: *Re Bayswater Trading Co Ltd* [1970] 1 All ER 608, [1970] 1 WLR 343. A contributory may have locus standi to present a petition if there is an enforceable agreement to take shares fraudulently registered in another's name but he must still satisfy the requirements of the Insolvency Act 1986 s 124(2) as to the minimum periods of registration or allotment: *Re Mossmain Ltd* [1986] 2 FTLR 410, sub nom *Re a Company* [1986] BCLC 391.

8 Ie the Insolvency Act 1986 s 76: see para 713 post.

9 Ibid s 124(3). Section 124(3) does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

10 Ie under ibid s 122(1)(f): see para 444 ante.

11 Ie under ibid s 122(1)(g): see para 444 ante.

12 Ibid s 124(3). Section 124(3) is deemed included in the Companies Act 1985 Pt V Ch VII (ss 159-181) (as amended) for the purposes of the Secretary of State's power to make regulations under s 179 (see COMPANIES vol 15 (2009) PARA 1243): Insolvency Act 1986 s 124(3). As to the Secretary of State see para 11 note 10 ante.

13 *Re Patent Steam Engine Co* (1878) 8 ChD 464.

14 *Re Littlehampton, Havre and Honfleur Steam Ship Co Ltd* (1865) 2 De GJ & Sm 521; cf *Re a Company* [1894] 2 Ch 349.

15 *Re JN2 Ltd* [1977] 3 All ER 1104, [1978] 1 WLR 183.

16 *Re Mossmain Ltd* [1986] 2 FTLR 410, sub nom *Re a Company* [1986] BCLC 391.

17 *Alipour v Ary* [1997] 1 WLR 534, [1997] 1 BCLC 557, CA (for further proceedings in the same matter see *Alipour v UOC Corpn* [2002] EWHC 937 (Ch), [2002] 2 BCLC 770). The following cases, supporting the proposition that the court cannot decide disputed questions of ownership of shares on a petition, must be read subject to that decision: *Re Bambi Restaurants Ltd* [1965] 2 All ER 79, [1965] 1 WLR 750; *Re JN2 Ltd* [1977] 3 All ER 1104, [1978] 1 WLR 183. Cf *Re Garage Doors Associates Ltd* [1984] 1 All ER 434, [1984] 1 WLR 35 (petition also seeking relief under the Companies Act 1985 s 459 on the grounds of unfairly prejudicial conduct: see further COMPANIES vol 14 (2009) PARA 466); *Re Quickdome Ltd* [1988] BCLC 370, 4 BCC 296; *Re a Company (No 001363 of 1988)*, ex p S-P [1989] BCLC 579, 5 BCC 18; *Re Land and Property Trust Co plc* [1991] BCLC 845, [1991] BCC 446; *Re a Company (No 007936 of 1994)* [1995] BCC 705.

18 *Coulson, Sanderson and Ward v Ward* [1986] PCC 57, CA (application for injunction would not be determined on the basis of balance of convenience but on whether there was a prima facie case that the petition would fail and that its presentation would constitute an abuse of the process). As to the position where relief alternative to winding up is available see para 477 post.

UPDATE

438-938 Winding Up by the Court

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454 Petition by contributory

NOTES 8-12--Insolvency Act 1986 s 124(3) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/455. Effect of voluntary winding up on contributory.

455. Effect of voluntary winding up on contributory.

Where there is a voluntary winding up, a contributory may present a petition for a winding up by the court, but the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up¹.

An existing voluntary winding up is, therefore, generally a bar to a contributory obtaining a compulsory order, unless the resolution to wind up has been passed fraudulently, or by undue influence, or unless creditors appear to support the petition². In exceptional circumstances a compulsory order may be obtained, even though no fraud or undue influence is proved, and even if no creditor appears in support³, as where the resolution for voluntary liquidation is carried owing to the preponderance of votes of those whose conduct appears to require such investigation as may be obtained only in a compulsory winding up⁴; or where the vendor to the company has been appointed liquidator in a voluntary winding up and the inception and operation of the company require such investigation⁵; or where steps are being taken to destroy the books of the company and to dissolve it⁶; or where resolutions have been passed for a voluntary winding up with a view to a reconstruction which has proved abortive⁷ or which is unfair to an independent majority of the shareholders⁸; or where there has been great delay in conducting the voluntary liquidation⁹.

1 Insolventy Act 1986 s 116; and see *Re Irrigation Co of France, ex p Fox* (1871) 6 Ch App 176 at 190; *Re Zinotty Properties Ltd* [1984] 3 All ER 754, [1984] 1 WLR 1249; *Re Gold Co* (1879) 11 ChD 701, CA; and para 453 note 4 ante. Cf *Adebayo v Nigeria Official Receiver* [1954] 2 All ER 197, [1954] 1 WLR 681, PC; and see para 458 text and note 3 post.

2 See *Re London and Mercantile Discount Co* (1865) LR 1 Eq 277; *Re Bank of Gibraltar and Malta* (1865) 1 Ch App 69; *Re Imperial Mercantile Credit Association* (1866) 12 Jur NS 739; *Re St David's Gold Mining Co Ltd* (1866) 14 LT 539; *Re Beaujolais Wine Co* (1867) 3 Ch App 15; *Re London Flour Co* (1868) 19 LT 136, CA; *Re Madras Coffee Co Ltd* (1869) 17 WR 643; *Re Irrigation Co of France, ex p Fox* (1871) 6 Ch App 176; *Re Star and Garter Ltd* (1873) 42 LJ Ch 374; *Re Sir John Moore Gold Mining Co* (1877) 25 WR 900; *Re Gold Co* (1879) 11 ChD 701, CA; *Re Vron Colliery Co* (1882) 20 ChD 442, CA; *Re Hadleigh Castle Gold Mines Ltd* [1900] 2 Ch 419. As to the creditors' rights in such a case see para 453 ante.

3 *Re Littlehampton, Havre and Honfleur Steam Ship Co Ltd* (1865) 2 De GJ & Sm 521; *Re West Surrey Tanning Co* (1866) LR 2 Eq 737; *Re Gold Co* (1879) 11 ChD 701, CA; *Re National Distribution of Electricity Co Ltd* [1902] 2 Ch 34, CA.

4 *Re Varieties Ltd* [1893] 2 Ch 235; *Re Inecto Ltd* (1922) 38 TLR 797; *Re Zinotty Properties Ltd* [1984] 3 All ER 754, [1984] 1 WLR 1249.

5 *Re Peruvian Amazon Co Ltd* (1913) 29 TLR 384.

6 *Re Haycraft Gold Reduction and Mining Co* [1900] 2 Ch 230 at 237.

7 *Re Gutta Percha Corp* [1900] 2 Ch 665.

8 *Re Consolidated South Rand Mines Deep Ltd* [1909] 1 Ch 491.

9 *Re Fire Annihilator Co* (1863) 32 Beav 561.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/456. Shareholder in arrear with calls.

456. Shareholder in arrear with calls.

Petitions by shareholders in arrear with calls have been dismissed on the ground that they have not performed their duty to the company¹. There is, however, no provision in the Insolvency Act 1986 that all calls due must have been paid; and, if calls of a petitioning shareholder are in arrear, the court will allow the petition to proceed on his paying the calls into court² or undertaking to submit to any order which the court may think fit to make as to the payment of the calls, in which case, if the petition is dismissed, the undertaking will usually be enforced by ordering the calls to be paid³.

1 *Re European Life Assurance Society* (1870) LR 10 Eq 403; *Re Steam Stoker Co* (1875) LR 19 Eq 416; *Re Petersburg and Viborg Gas Co, ex p Hartmont* (1875) 33 LT 637.

2 *Re Diamond Fuel Co* (1879) 13 ChD 400, CA, not following *Re European Life Assurance Society* (1870) LR 10 Eq 403; *Re Steam Stoker Co* (1875) LR 19 Eq 416.

3 *Re Crystal Reef Gold Mining Co* [1892] 1 Ch 408.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/457. Fully paid shareholder.

457. Fully paid shareholder.

A fully paid shareholder may present a winding-up petition as a contributory¹. The court cannot refuse to make a winding-up order on the ground only that the assets have been mortgaged to an amount equal to or in excess of those assets, or that there are no assets²; but a contributory is not entitled to an order in such a case where there is no ground for a winding-up order except insolvency³. The petition must, therefore, either allege, and the evidence must establish, that there is a probability of surplus assets for a return to the contributories⁴, or else it must be shown that there are other cogent reasons for the making of an order⁵. The smallness of a minority shareholder's holding is no bar to his presenting a petition if what he may hope to recover in the liquidation is likely to be appreciable in relation to the size of his holding⁶.

It is not appropriate to present a petition if there is some other remedy available in relation to the complaint made by the petitioner⁷. In any case the court has a discretion and may refuse to make an order on a contributory's petition where the circumstances do not justify a winding-up order⁸. It is undesirable to include as a matter of course a prayer for winding up as an alternative to relief claimed in respect of unfairly prejudicial conduct⁹.

1 *Re National Savings Bank Association* (1866) 1 Ch App 547. As to the power of contributories to petition see generally para 450 ante.

2 Insolvency Act 1986 s 125(1). This provision was first introduced by the Companies Act 1907 s 29 (repealed) but did not affect the previous practice on petitions by fully paid shareholders: *Re Kaslo-Slocan Mining and Financial Corp'n Ltd* [1910] WN 13. See also para 481 post.

3 *Re Rica Gold Washing Co* (1879) 11 ChD 36, CA; *Re SA Hawken Ltd* [1950] 2 All ER 408 at 411; *Re Bellador Silk Ltd* [1965] 1 All ER 667; *Re Othry Construction Ltd* [1966] 1 All ER 145, [1966] 1 WLR 69; *Re Expanded Plugs Ltd* [1966] 1 All ER 877, [1966] 1 WLR 514.

4 See the cases referred to in note 3 supra; *Re Diamond Fuel Co* (1879) 13 ChD 400, CA; *Re WR Willcocks & Co Ltd* [1974] Ch 163, [1973] 2 All ER 93, distinguishing *Re Rica Gold Washing Co* (1879) 11 ChD 36, CA; *Re Chesterfield Catering Co Ltd* [1977] Ch 373, [1977] 3 All ER 294; *Re Commercial and Industrial Insulations Ltd* [1986] BCLC 191; *Re Martin Coulter Enterprises Ltd* [1988] BCLC 12; *Re a Company (No 00314 of 1989), ex p Estate Acquisition and Development Ltd* [1991] BCLC 154, [1990] BCC 221; *Re Wessex Computer Stationers Ltd* [1992] BCLC 366; *Re Pimlico Capital Ltd, TFB Mortgages Ltd v Pimlico Capital Ltd* [2002] EWHC 878 (Ch), [2002] 2 BCLC 544.

5 *Re Haycraft Gold Reduction and Mining Co* [1900] 2 Ch 230 (preservation of evidence which might lead to substantial claim against directors); *Re Newman and Howard Ltd* [1962] Ch 257, [1961] 2 All ER 495 (petition based on failure to supply accounts and information); *Re Chesterfield Catering Co Ltd* [1977] Ch 373, [1977] 3 All ER 294 (petition must allege that some advantage or the avoidance or minimisation of some disadvantage would accrue on a winding up by virtue of the petitioner's membership of the company and not some private advantage); *Re Millennium Advanced Technology Ltd* [2004] EWHC 711 (Ch), [2004] 1 WLR 2177 (creditor is not entitled to rely on public interest grounds in petitioning, since a petition is only properly presented if it is bone fide in pursuit of some interest of the petitioner arising from his particular status as such).

6 *Bryanston Finance Ltd v de Vries (No 2)* [1976] Ch 63, [1976] 1 All ER 25.

7 *Re Pioneers and Mashonaland Syndicate* [1893] 1 Ch 731 (issue of shares alleged not to be fully paid); *Re Cuthbert Cooper & Sons Ltd* [1937] Ch 392, [1937] 2 All ER 466 (failure to register petitioners as shareholders; proceedings for rectification of register available); *Re a Company* [1985] BCLC 80. As to alternative remedies available to members against unfairly prejudicial conduct see COMPANIES vol 14 (2009) PARA 466 et seq. It is no bar to the presentation of a petition that the affairs of the company are being investigated by inspectors

appointed under the Companies Act 1985 s 431 (see COMPANIES vol 15 (2009) PARA 1541): *Bryanston Finance Ltd v de Vries (No 2)* [1976] Ch 63, [1976] 1 All ER 25. See further para 477 post.

8 *Re Lancashire Brick and Tile Co* (1865) 34 Beav 330.

9 *Re* under the Companies Act 1985 s 459 (as amended): see COMPANIES vol 14 (2009) PARA 466. A prayer for a winding-up order will, therefore, be struck out in appropriate cases: *Re a Company (No 00314 of 1989)*, *ex p Estate Acquisition and Development Ltd* [1991] BCLC 154, [1990] BCC 221.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(i) Petitioners; Effect of Petitioning/458. Petition by official receiver.

458. Petition by official receiver.

The official receiver attached to the court may present a petition for the winding up of a company already in voluntary liquidation, but the court cannot make a winding-up order on the petition unless it is satisfied that the existing winding up cannot be continued with due regard to the interests of the creditors or contributories¹; and it is not a matter of course to make a compulsory winding-up order on the official receiver's petition. The question whether this test is satisfied must be decided on the balance of probabilities², but it does not follow that, because a company is controlled by one shareholder and the liquidator may be regarded as his nominee, the test is automatically satisfied³. An order will, however, be made when, after such an order, the official receiver will possess any power which the voluntary liquidator cannot exercise, and which is necessary in order that there may be an efficient winding up in the interests of the creditors or contributories, as, for example, where misfeasance proceedings are contemplated and a public examination is absolutely necessary to obtain a proper disclosure of facts⁴.

¹ Insolvency Act 1986 s 124(5). See *Re Ryder Installations Ltd* [1966] 1 All ER 453n, [1966] 1 WLR 524. As to the official receiver see para 503 et seq post.

² *Re J Russell Electronics Ltd* [1968] 2 All ER 559, [1968] 1 WLR 1252, not following dicta in *Re 1897 Jubilee Sites Syndicate* [1899] 2 Ch 204 at 205-206, to the effect that a 'very strong case' had to be made out.

³ *Adebayo v Nigeria Official Receiver* [1954] 2 All ER 197, [1951] 1 WLR 681, PC.

⁴ *Re 1897 Jubilee Sites Syndicate* [1899] 2 Ch 204. As to misfeasance proceedings see para 688 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/459. Form and contents of petition other than a petition presented by one or more contributories.

(ii) Procedure on Petition

A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES

459. Form and contents of petition other than a petition presented by one or more contributories.

Every petition for the winding up of a company by the court presented by any person entitled to do so¹, other than one or more contributories², must be in the prescribed form³, with such variations as circumstances may require⁴. No insolvency proceedings⁵, which include a winding-up petition, are to be invalidated by any formal defect or by any irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by an order of the court⁶.

In his petition a petitioner⁷ must allege and prove the facts entitling him to present it, showing that one or more of the grounds specified in the Insolvency Act 1986 or in any other enactment for making a compulsory order exist⁸. Unless these allegations are contained in the petition, it is misconceived⁹, and the court will dismiss it¹⁰. The court will not travel outside the allegations in the petition¹¹, and may strike out the petition if those allegations are too vague¹² or are so unsatisfactory as to be an abuse of the process of the court¹³.

If the petitioner's address is omitted from the petition, security for costs will be ordered¹⁴.

Where a petition is filed at the instance of a company's administrator¹⁵, the petition must:

- 902 (1) be expressed to be the petition of the company by its administrator¹⁶;
- 903 (2) state the name of the administrator, the court case number and the date that the company entered administration¹⁷; and
- 904 (3) contain an application¹⁸ requesting that the appointment of the administrator cease to have effect¹⁹.

Any petition filed in relation to a company in respect of which there is in force a voluntary arrangement²⁰ or which is in administration must be presented to the court to which the nominee's report²¹ was submitted or, as the case may be, the court having jurisdiction for the administration²².

Any petition filed at the instance of a company's administrator as mentioned above, or presented by the supervisor of a voluntary arrangement in force for the company, is to be treated as if it were a petition filed by contributories; and the provisions relating to a petition by contributories apply accordingly²³.

Where a petition contains a request for the appointment of a person as liquidator in accordance with provisions providing for the appointment of an administrator or supervisor as liquidator²⁴, the person whose appointment is sought must, not less than two days before the return day²⁵ for the petition, file in court²⁶ a report including particulars of:

- 905 (a) a date on which he notified creditors of the company, either in writing or at a meeting of creditors, of the intention to seek his appointment as liquidator, such date to be at least ten days before the day on which the report is filed²⁷; and
 906 (b) details of any response from creditors to that notification, including any objections to his appointment²⁸.

1 See para 450 et seq ante.

2 As to the procedure on a petition presented by one or more contributories see paras 468-469 post.

3 For the prescribed form of petition see the Insolvency Rules 1986, SI 1986/1925, rr 4.7, 12.7, Sch 4 Form 4.2 (r 4.7 amended by SI 1987/1919).

4 Insolvency Rules 1986, SI 1986/1925, r 12.7(1), (2). See further para 1043 post.

5 For these purposes, 'insolvency proceedings' means any proceedings under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended): rr 13.1, 13.7.

6 Ibid r 7.55; and see para 1054 post. In *Re J and P Sussman Ltd* [1958] 1 All ER 857, [1958] 1 WLR 519 (following *Re L'Industrie Verrière Ltd* [1914] WN 222 (a case of advertisement) (see para 463 post)), the company's name was misspelt (one 'n' instead of two in 'Sussmann') in a creditor's petition on which a winding-up order was made; subsequently leave to amend was granted, readvertisement being unnecessary.

7 For these purposes, in winding up references to 'the petitioner' or 'the petitioning creditor' include any person who has been substituted as such, or been given carriage of the petition: Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.10.

8 See ibid r 4.2(1); and para 444 et seq ante.

9 *Re Wear Engine Works Co* (1875) 10 Ch App 188; *Re Steam Stoker Co* (1875) LR 19 Eq 416.

10 *Re Spence's Patent Non-Conducting Composition and Cement Co* (1869) LR 9 Eq 9; *Re Wear Engine Works Co* (1875) 10 Ch App 188; *Re Langham Skating Rink Co* (1877) 5 ChD 669, CA; cf *Re Queen's Benefit Building Society* (1871) 6 Ch App 815; *Re White Star Consolidated Gold Mining Co* (1883) 48 LT 815 (where amendments were allowed).

11 *Re Lundie Bros Ltd* [1965] 2 All ER 692, [1965] 1 WLR 1051; *Re Fildes Bros Ltd* [1970] 1 All ER 923, [1970] 1 WLR 592.

12 *Re WR Willcocks & Co Ltd* [1974] Ch 163, [1973] 2 All ER 93.

13 *Re a Company* [1974] 1 All ER 256, [1973] 1 WLR 1566.

14 *Re Sturgis (British) Motor Power Syndicate Ltd* (1885) 53 LT 715. See further CIVIL PROCEDURE.

15 See paras 146 et seq, 450 ante.

16 Insolvency Rules 1986, SI 1986/1925, r 4.7(7)(a) (r 4.7(7)-(10) added by SI 1987/1919).

17 Insolvency Rules 1986, SI 1986/1925, r 4.7(7)(b) (as added (see note 16 supra); and amended by SI 2003/1730).

18 Ie under the Insolvency Act 1986 Sch B1 para 79(2) (as added): see para 365 ante.

19 Insolvency Rules 1986, SI 1986/1925, r 4.7(7)(c) (as added (see note 16 supra); and amended by SI 2003/1730).

20 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

21 Ie under ibid s 2 (as amended): see para 113 ante.

22 Insolvency Rules 1986, SI 1986/1925, r 4.7(8) (as added (see note 16 supra); and substituted by SI 2003/1730).

23 Insolvency Rules 1986, SI 1986/1925, r 4.7(9) (as added: see note 16 supra). As to the provisions relating to a petition by contributories see paras 468-469 post.

- 24 le in accordance with the Insolvency Act 1986 s 140 (as amended): see para 558 post.
- 25 For the meaning of 'return day' see para 468 post.
- 26 For the meaning of 'file in court' see para 129 note 3 ante.
- 27 Insolvency Rules 1986, SI 1986/1925, r 4.7(10)(a) (as added: see note 16 supra).
- 28 Ibid r 4.7(10)(b) (as added: see note 16 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

459 Form and contents of petition other than a petition presented by one or more contributories

TEXT AND NOTES--See SI 1986/1925 r 4.6A (injunction to restrain presentation or advertisement of petition) (added by SI 2010/686).

NOTE 3--SI 1986/1925 Sch 4 Form 4.2 amended: SI 2009/2472.

TEXT AND NOTES 7, 8--SI 1986/1925 r 4.2(1) amended: SI 2009/2472.

NOTE 19--Head (3) where applicable, contain an application under SI 1986/1925 Sch B1 para 79 requesting that the appointment of the administrator cease to have effect: r 4.7(7)(c) (substituted by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/460. Presentation and filing of petition.

460. Presentation and filing of petition.

The petition, verified by affidavit¹, must be filed in court². No petition may, however, be filed unless there is produced with it the receipt for the deposit payable on presentation³ or the Secretary of State has given written notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit to the official receiver and such notice has not been revoked in relation to the petitioner⁴.

If the petitioner is other than the company itself, there must be delivered with the petition one copy for service on the company⁵, and one copy to be exhibited to the affidavit verifying service⁶. There must in any case be delivered with the petition:

- 907 (1) if the company is in course of being wound up voluntarily⁷, and a liquidator has been appointed, one copy of the petition to be sent to him⁸;
- 908 (2) if the company is in administration⁹, one copy to be sent to the administrator¹⁰;
- 909 (3) if an administrative receiver has been appointed in relation to the company¹¹, one copy to be sent to him¹²;
- 910 (4) if there is in force for the company a voluntary arrangement¹³, one copy for the supervisor of the arrangement¹⁴;
- 911 (5) if a member state liquidator¹⁵ has been appointed in main proceedings¹⁶ in relation to the company, one copy to be sent to him¹⁷; and
- 912 (6) if the company is an authorised deposit-taker¹⁸ or a former authorised deposit-taker¹⁹, and the petitioner is not the Financial Services Authority²⁰, one copy to be sent to the Authority²¹.

Each of the copies delivered must have applied to it the seal of the court, and must be issued to the petitioner²². The court must fix a venue²³ for the hearing of the petition; and this must be indorsed on any such copy issued to the petitioner²⁴.

In respect of all insolvency proceedings²⁵, including petitions, the court must open and maintain a file for each case, and, subject to directions of the registrar²⁶, all documents relating to such proceedings must be placed on the relevant file²⁷.

No proceedings are to be filed in the Central Office of the High Court²⁸.

1 See para 466 post.

2 Insolvency Rules 1986, SI 1986/1925, r 4.7(1). For the meaning of 'file in court' see para 129 note 3 ante. A petition may be presented in the District Registries of Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne or Preston, but no other, since no district registrars other than those in the places stated are given the necessary powers: rr 13.1, 13.2(1), (2), (4). See para 1055 post. As to the courts having winding-up jurisdiction see para 438 et seq ante; and as to the courts to which a petition should be presented where there is an administration order or voluntary arrangement in force in relation to the company see para 459 ante.

3 Ibid r 4.7(2) (substituted by SI 2004/584). As to the deposit payable on presentation of the petition see para 474 post.

4 Insolvency Rules 1986, SI 1986/1925, r 4.7(2), (2A) (r 4.7(2) as substituted (see note 3 supra); and r 4.7(2A) added by SI 2004/584). Such a notice may be revoked in relation to the petitioner in whose favour it is given by a further notice in writing to the court stating that the earlier notice is revoked in relation to the petitioner: Insolvency Rules 1986, SI 1986/1925, r 4.7(2B) (added by SI 2004/584). As to the Secretary of State see para 11 note 10 ante. As to the official receiver see para 503 et seq post.

5 See para 461 post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.7(3).

7 As to voluntary winding up see para 939 et seq post.

8 Insolvency Rules 1986, SI 1986/1925, r 4.7(4)(a).

9 As to administration orders see para 145 et seq ante.

10 Insolvency Rules 1986, SI 1986/1925, r 4.7(4)(b) (amended by SI 2003/1730; SI 2004/584).

11 As to administrative receivers see para 380 et seq ante. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

12 Insolvency Rules 1986, SI 1986/1925, r 4.7(4)(c).

13 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

14 Insolvency Rules 1986, SI 1986/1925, r 4.7(4)(d).

15 A 'member state liquidator' means a person falling within the definition of 'liquidator' in EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 2(b) (see para 450 note 7 ante), appointed in proceedings to which the European Regulation on Insolvency Proceedings applies in a member state other than the United Kingdom: Insolvency Rules 1986, SI 1986/1925, r 13.13(11) (added by SI 2002/1307). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. For the meaning of 'United Kingdom' see para 12 note 2 ante.

16 'Main proceedings' means proceedings opened in accordance with the European Regulation on Insolvency Proceedings art 3(1) and falling within the definition of insolvency proceedings in art 2(a), and set out in Annex A under either the heading 'United Kingdom' (in relation to England and Wales and Scotland) or that relating to another member state (in relation to another member state): Insolvency Rules 1986, SI 1986/1925, r 13.13(10) (added by SI 2002/1307).

17 Insolvency Rules 1986, SI 1986/1925, r 4.7(4)(da) (added by SI 2002/1307).

18 'Authorised deposit-taker' means a person with permission under the Financial Services Act Markets Act 2000 Pt IV (ss 40-55) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 348 et seq) to accept deposits: Insolvency Rules 1986, SI 1986/1925, r 13.12A(1) (r 13.12A added by SI 2001/3649).

This definition and the definition of 'former authorised deposit-taker' in note 19 infra must be read with the Financial Services and Markets Act 2000 s 22, Sch 22, and any relevant order made under s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84): Insolvency Rules 1986, SI 1986/1925, r 13.12A(3) (as so added).

19 'Former authorised deposit-taker' means a person who is not an authorised deposit-taker, was formerly an authorised institution under the Banking Act 1987, or a recognised bank or licensed institution under the Banking Act 1979, and continues to have liability in respect of any deposit for which it had a liability at a time when it was an authorised institution, recognised bank or licensed institution: Insolvency Rules 1986, SI 1986/1925, r 13.12A(2) (as added: see note 18 supra). See further note 18 supra.

20 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq. If the company is an authorised person with permission to effect or carry out contracts of insurance, and the petitioner is not the Financial Services Authority, the petitioner must serve a copy of the petition on the Authority: Financial Services and Markets Act 2000 s 369.

21 Insolvency Rules 1986, SI 1986/1925, r 4.7(4)(e) (amended by SI 1998/1129; SI 2001/3649).

22 Insolvency Rules 1986, SI 1986/1925, r 4.7(5).

23 For the meaning of 'venue' see para 91 note 7 ante.

24 Insolvency Rules 1986, SI 1986/1925, r 4.7(6).

25 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

26 In company insolvency proceedings in the High Court, 'the registrar' means: (1) a Registrar in Bankruptcy of the High Court; or (2) where the proceedings are in the District Registries specified in note 2 supra, the district judge: Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.2(4) (r 13.2(4), (5) amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)). In company insolvency proceedings in a county court, 'the district judge' means the officer of the court whose duty it is to exercise the functions which in the High Court are exercised by a district judge: Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.2(5) (as so amended). See further para 1055 post.

27 See *ibid* r 7.30(1); and para 1067 post.

28 See *ibid* r 7.30(2); and para 1067 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

460 Presentation and filing of petition

TEXT AND NOTES--See SI 1986/1925 r 4.6A (injunction to restrain presentation or advertisement of petition) (added by SI 2010/686).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--SI 1986/1925 r 4.7(3) substituted: SI 2010/686.

NOTE 20--See also Financial Services and Markets Act 2000 s 369A (added by Dormant Bank and Building Society Accounts Act 2008 Sch 2 para 7), which makes provision for the service of petitions in relation to reclaim funds (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 590A).

NOTE 26--SI 1986/1925 r 13.2(3)-(5) substituted by r 13.2(3A): SI 2010/686.

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461. Service of petition.

A copy of the petition bearing the seal of the court in which it is presented¹ must be served upon the company, where the petitioner is other than the company itself, at the company's registered office, being:

- 913 (1) the place which is specified in the company's statement delivered² to the registrar of companies specifying the intended situation of its registered office on incorporation³; or
- 914 (2) if notice has been given⁴ by the company to the registrar of companies of a change in the registration of the company's office, the place specified in that notice or, as the case may be, in the last such notice⁵.

Service of the petition at the registered office may be effected:

- 915 (a) by handing it to a person who there and then acknowledges himself to be, or to the best of the server's knowledge, information and belief is, a director or other officer, or employee, of the company⁶;
- 916 (b) by handing it to a person who there and then acknowledges himself to be authorised to accept service of documents on the company's behalf⁷; or
- 917 (c) in the absence of any such person as is mentioned in head (a) or head (b) above by depositing it at or about the registered office in such a way that it is likely to come to the notice of a person attending at the office⁸.

If for any reason service at the registered office is not practicable, or the company has no registered office or is an unregistered company⁹, the petition may be served on the company by leaving it at the company's last known principal place of business in such a way that it is likely to come to the attention of a person attending there, or by delivering it to the secretary or some director, manager or principal officer of the company, wherever that person may be found¹⁰. If for any reason it is impracticable so to effect service, the petition may be served in such other manner as the court may approve or direct¹¹, upon an application¹² for leave of the court which may be made without notice on affidavit stating what steps have been taken to comply with these provisions, and the reasons why it is impracticable to effect service as so provided¹³.

Service of the petition must be proved by affidavit, specifying the manner of service¹⁴. The affidavit must have exhibited to it a sealed copy of the petition, and, if substituted service has been ordered, a sealed copy of the order; and it must be filed in court¹⁵ immediately after service¹⁶.

If to the petitioner's knowledge the company is in course of being wound up voluntarily¹⁷, a copy of the petition must be sent¹⁸ by him to the liquidator¹⁹. If to the petitioner's knowledge an administrative receiver has been appointed in relation to the company²⁰, or the company is in administration²¹, a copy of the petition must be sent by him to the receiver or, as the case may be, the administrator²². If to the petitioner's knowledge there is in force for the company a voluntary arrangement²³, a copy of the petition must be sent by him to the supervisor of the voluntary arrangement²⁴. If to the petitioner's knowledge there is a member state liquidator²⁵

appointed in main proceedings²⁶ in relation to the company, a copy of the petition must be sent by him to the member state liquidator²⁷.

If the company is an authorised institution or former authorised institution²⁸, a copy of the petition must be sent by the petitioner to the Financial Services Authority²⁹.

Where a winding-up petition is served at the incorrect registered office and a winding-up order made, the petitioner will not be liable to the company in negligence for any damage thereby caused³⁰.

1 See the Insolvency Rules 1986, SI 1986/1925, r 4.8(1); and para 460 ante.

2 Ie under the Companies Act 1985 s 10 (as amended): see COMPANIES vol 14 (2009) PARA 111.

3 Insolvency Rules 1986, SI 1986/1925, r 4.8(2)(a). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 Ie under the Companies Act 1985 s 287 (as substituted): see COMPANIES vol 14 (2009) PARA 129.

5 Insolvency Rules 1986, SI 1986/1925, r 4.8(2)(b).

6 Ibid r 4.8(3)(a).

7 Ibid r 4.8(3)(b).

8 Ibid r 4.8(3)(c).

9 As to the winding up of unregistered companies see para 1147 et seq post.

10 Insolvency Rules 1986, SI 1986/1925, r 4.8(4) (r 4.8(4) substituted by SI 1987/1919). In the case of an overseas company, service may be effected in any manner provided for by the Companies Act 1985 s 695 (as amended) (see COMPANIES vol 15 (2009) PARA 1836): Insolvency Rules 1986, SI 1986/1925, r 4.8(5).

11 Ibid r 4.8(6) (amended by SI 1987/1919).

12 As to the procedure and practice on applications generally see para 1055 et seq post.

13 Insolvency Rules 1986, SI 1986/1925, r 4.8(7).

14 Ibid r 4.9(1). For the prescribed forms of affidavit of service see rr 4.9, 12.7, Sch 4 Form 4.4 (service at registered office), Form 4.5 (service other than at registered office or on an overseas company).

15 For the meaning of 'file in court' see para 129 note 3 ante.

16 Insolvency Rules 1986, SI 1986/1925, r 4.9(2).

17 As to voluntary winding up see para 939 et seq post.

18 A copy of the petition must be dispatched on the next business day after the day on which the petition is served on the company: Insolvency Rules 1986, SI 1986/1925, r 4.10(5). For the meaning of 'business day' see para 113 note 4 ante. As to service by post and general provisions as to service see paras 1087, 1090 post.

19 Ibid r 4.10(1).

20 As to administrative receivers see para 380 et seq ante. For the meaning of 'administrative receiver' see COMPANIES vol 15 (2009) PARA 1337.

21 As to entering administration see para 145 et seq ante.

22 Insolvency Rules 1986, SI 1986/1925, r 4.10(2) (amended by SI 2003/1730).

23 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended)): see para 71 et seq ante.

24 Insolvency Rules 1986, SI 1986/1925, r 4.10(3).

25 For the meaning of 'member state liquidator' see para 460 note 15 ante.

26 For the meaning of 'main proceedings' see para 460 note 16 ante.

27 Insolvency Rules 1986, SI 1986/1925, r 4.10(3A) (added by SI 2002/1307). This provision does not apply if the petitioner is a member state liquidator: Insolvency Rules 1986, SI 1986/1925, r 4.10(3A) (as so added).

28 le within the meaning of the Banking Act 1987 (repealed): see para 147 note 4 ante.

29 Insolvency Rules 1986, SI 1986/1925, r 4.10(4) (amended by SI 1987/1919; SI 1998/1129). This provision does not apply if the petitioner is the Financial Services Authority itself: Insolvency Rules 1986, SI 1986/1925, r 4.10(4) (as so amended). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

30 *Business Computers International Ltd v Registrar of Companies* [1988] Ch 229, [1987] 3 All ER 465 (where it was held that no duty of care is owed by one litigant to another as to the manner of conducting litigation whether in regard to the service of process or to any other step in the proceedings).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

461 Service of petition

TEXT AND NOTES--SI 1986/1925 r 4.9 substituted by r 4.9A: SI 2010/686.

TEXT AND NOTES 2-5--SI 1986/1925 r 4.8(2)(a), (b) amended: SI 2009/2472.

NOTE 10--SI 1986/1925 r 4.8(5) amended: SI 2009/2472.

NOTE 13--SI 1986/1925 r 4.8(7) amended: SI 2010/686.

NOTE 14--SI 1986/1925 Sch 4 Form 4.5 amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/462. Advertisement of petition.

462. Advertisement of petition.

The petition must be advertised once in the Gazette¹, unless the court otherwise directs². The court will exercise its discretion to order that the petition should not be advertised only in exceptional circumstances³. The purpose of advertisement of a winding-up petition is to notify persons of the petition, so that they might appear and be heard, and to warn creditors of the risk of trading with a potentially insolvent company⁴.

If the petitioner is the company itself, the advertisement must be made to appear not less than seven business days⁵ before the day appointed for the hearing⁶; otherwise the advertisement must be made to appear not less than seven business days after service of the petition on the company⁷, nor less than seven business days before the day so appointed⁸.

If compliance with these provisions is not reasonably practicable, the court may direct that advertisement of the petition be made to appear, instead of in the Gazette, in a specified newspaper⁹.

In a proper case, application may be made to restrain the advertisement of a petition¹⁰.

Where an administration petition has been presented in respect of the company, the court has jurisdiction to restrain advertisement pending hearing of the administration petition¹¹.

1 As to the Gazette, and the gazetting of notices, see para 1048 post. 'Advertisement' in the Insolvency Rules 1986, SI 1986/1925, r 4.11 means advertisement in the Gazette, and not advertisement in the sense of notification: *SN Group plc v Barclays Bank plc* [1993] BCC 506; *Secretary of State for Trade and Industry v North West Holdings plc* [1999] 1 BCLC 425, CA (press notices issued by the Secretary of State on his petition did not constitute 'advertisement' within the meaning of the Insolvency Rules 1986, SI 1986/1925, r 4.11).

2 Insolvency Rules 1986, SI 1986/1925, r 4.11(1).

3 *Applied Data Base Ltd v Secretary of State for Trade and Industry* [1995] 1 BCLC 272.

4 *Re a Company (No 007923 of 1994)* [1995] 1 WLR 953, [1995] 1 BCLC 440, CA. Whereas presentation of a petition will be restrained only on the ground of abuse of process, the Insolvency Rules 1986, SI 1986/1925, r 4.11(1), allows the court to take other factors into account on an application to restrain advertisement of a petition: *Re a Company (No 007923 of 1994)* supra.

5 For the meaning of 'business day' see para 113 note 4 ante. The provisions of CPR 2.8 (see CIVIL PROCEDURE vol 11 (2009) PARA 88) apply as regards computation of time in respect of anything required or authorised to be done by the Insolvency Rules 1986, SI 1986/1925 (as amended) (see r 12.9(1) (r 12.9 substituted by SI 1999/1022)), and the provisions of CPR 3.1(2)(a) (see CIVIL PROCEDURE vol 11 (2009) PARA 249) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Insolvency Rules 1986, SI 1986/1925 (as amended) (see r 12.9(2) (as so substituted)). See further para 1053 post. Where, by any provision of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended) about winding up, the time for doing anything is limited, the court may extend the time either before or after it has expired on such terms, if any, as it thinks fit: r 4.3.

6 Ibid r 4.11(2)(a).

7 If advertisement takes place less than seven days after service of the petition on the company, the petition is liable to be struck out: *Re Signland Ltd* [1982] 2 All ER 609n. Cf *Re Roselmar Properties Ltd* (1986) 2 BCC 99, 156 (petition advertised four days after service but not struck out because company already in voluntary liquidation and no damage would be caused to company); and see *Re Doreen Boards Ltd* [1996] 1 BCLC 501 (contributory's petition struck out as an abuse of process where the petition was prematurely notified to third parties). The jurisdiction to strike out is a discretionary disciplinary jurisdiction, and thus will not be exercised

where service was effected at the old registered office of a company, but the change of registered office had not yet been filed by the registrar of companies: *Re Corbenstoke Ltd* [1989] BCLC 496, 5 BCC 197; *Re Garton (Western) Ltd* [1989] BCLC 304, 5 BCC 198 (petition not struck out where company had changed its registered office shortly before presentation). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. The purpose of the seven-day period between service and advertisement is to enable the company to consider its position and, if necessary, to seek an order under the Insolvency Act 1986 s 127 (as amended): *Re a Company (No 0013925 of 1991), ex p Rousell* [1992] BCLC 562, sub nom *Re Bill Hennessey Associates Ltd* [1992] BCC 386 (petition sent to the company's bankers shortly after presentation, so as to put the company under improper pressure to settle the debt; petition struck out); *Re a Company (No 001127 of 1992)* [1992] BCC 477. Cf *SN Group plc v Barclays Bank plc* [1993] BCC 506 (petition not struck out where the company was insolvent and where the purpose of giving notice to the company's bankers was to preserve the assets of the company pending liquidation).

8 Insolvency Rules 1986, SI 1986/1925, r 4.11(2)(b). Rule 4.11(2)(b) is mandatory and is designed to ensure that the class remedy of winding up by the court is duly made available to all creditors and is not used as a means of putting pressure on the company to pay the petitioner's debt: *Practice Direction--Insolvency Proceedings* para 2.1. Failure to comply with the Insolvency Rules 1986, SI 1986/1925, r 4.11(2)(b), without good reason accepted by the court, may lead to the summary dismissal of the petition on the return date: r 4.11(5); *Practice Direction--Insolvency Proceedings* para 2.1. If the court, in its discretion, grants an adjournment, this will be on condition that the petition is advertised in due time for the adjourned hearing; and no further adjournment for the purpose of advertisement will normally be granted: *Practice Direction--Insolvency Proceedings* para 2.1.

9 Insolvency Rules 1986, SI 1986/1925, r 4.11(3) (amended by SI 1991/495).

10 See para 452 ante.

11 See *Re a Company (No 001992 of 1988)* [1989] BCLC 9, 4 BCC 451. The exercise of the court's jurisdiction to restrain advertisement may be mandatory: *Re a Company (No 001992 of 1988)* supra. The court may further restrain advertisement under the 'quia timet' jurisdiction (see CIVIL PROCEDURE vol 11 (2009) PARA 362) upon the company's undertaking to present an administration petition immediately: *Re a Company (No 001448 of 1989)* [1989] BCLC 715, 5 BCC 706.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

462 Advertisement of petition

TEXT AND NOTES--SI 1986/1925 r 4.11 substituted by SI 2009/642 and amended by SI 2009/2472. See SI 1986/1925 r 4.6A (injunction to restrain presentation or advertisement of petition) (added by SI 2010/686).

NOTE 8--SI 1986/1925 r 4.11(5) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/463. Contents of advertisement.

463. Contents of advertisement.

The advertisement¹ of the petition must state:

- 918 (1) the name of the company and the address of its registered office or, in the case of an unregistered company², the address of its principal place of business or, in the case of an overseas company³, the address at which service of the petition was effected⁴;
- 919 (2) the name and address of the petitioner⁵;
- 920 (3) where the petitioner is the company itself, the address of its registered office or, in the case of an unregistered company, of its principal place of business⁶;
- 921 (4) the date on which the petition was presented⁷;
- 922 (5) the venue⁸ fixed for the hearing of the petition⁹;
- 923 (6) the name and address of the petitioner's solicitor¹⁰, if any¹¹; and
- 924 (7) that any person intending to appear at the hearing, whether to support or oppose the petition, must give the prescribed notice¹² of his intention¹³.

If the petition is not duly advertised¹⁴, the court may dismiss it¹⁵.

The advertisement may be invalidated by a material error in it, for example as to the company's name¹⁶, the day of hearing¹⁷, the title of the petition¹⁸, or if the note requiring persons who intend to appear on the hearing of the petition to give the prescribed notice is omitted from the advertisement¹⁹; but, where the mistake is accidental and no one is likely to be deceived, the court in the exercise of its discretion²⁰ may disregard the mistake²¹.

1 For the prescribed form of advertisement see the Insolvency Rules 1986, SI 1986/1925, rr 4.11, 12.7, Sch 4 Form 4.6.

2 See para 1147 et seq post.

3 See paras 1163-1164 post.

4 Insolvency Rules 1986, SI 1986/1925, r 4.11(4)(a). See further COMPANIES vol 15 (2009) PARA 1836.

5 Ibid r 4.11(4)(b).

6 Ibid r 4.11(4)(c).

7 Ibid r 4.11(4)(d).

8 For the meaning of 'venue' see para 91 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 4.11(4)(e).

10 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

11 Insolvency Rules 1986, SI 1986/1925, r 4.11(4)(f).

12 Ie under ibid r 4.16: see para 471 post.

13 Ibid r 4.11(4)(g).

14 In accordance with ibid r 4.11: see para 462 ante.

15 Ibid r 4.11(5). As to extension of time see para 462 note 5 ante.

16 *Re City and County Bank* (1875) 10 Ch App 470 at 477, CA.

17 *Re Joint Stock Companies Winding up Act* (1849) 13 Beav 434; *Re Bull, Bevan & Co* [1891] WN 170. Where a wrong date for giving notice of intention to appear was inserted, orders have been made without readvertising; *Re Broads Patent Night Light Co* [1892] WN 5; *Re Saul Moss & Sons Ltd* (1906) 50 Sol Jo 575. The costs of an advertisement with a mistake in it may be disallowed: *Practice Note* [1929] WN 66.

18 *Re Marezzo Marble Co Ltd* (1874) 43 LJ Ch 544; *Practice Note* [1948] WN 481.

19 *Re Hille India Rubber Co* [1897] WN 6; and see *Re Monte de Piété of England Ltd* (1892) 37 Sol Jo 48.

20 See the Insolvency Rules 1986, SI 1986/1925, r 7.55; and para 1054 post.

21 *Re Consolidated Minera Lead Mining Co Ltd* (1876) 25 WR 36; *Re L'Industrie Verrière Ltd* (1894) 58 Sol Jo 611, followed in *Re J and P Sussman Ltd* [1958] 1 All ER 857, [1958] 1 WLR 519. See also *Re Army and Navy Hotel* (1886) 31 ChD 644; *Re Newcastle Machinists Co* [1888] WN 246, [1889] WN 1; *Re London and Provincial Pure Ice Manufacturing Co Ltd* (1904) 48 Sol Jo 589; *Re Samuel Birch Co Ltd* [1907] WN 31 (where a readvertisement was required). As to the conditions under which a mistake in the spelling of the company's name may be waived see *Re Vidiofusion Ltd* [1975] 1 All ER 76n, [1974] 1 WLR 1548.

Whether defects are likely to be waived by the court depends on their materiality and thus:

- 23 (1) where the company's address is omitted, the petition will normally need to be readvertised; the importance of the company's address does not relate to the need of creditors to contact the company, but arises because the address further defines the company, so that creditors will have no doubt as to which company is referred to;
- 24 (2) if the petitioner's address is omitted, readvertisement will not normally be necessary, provided that the address of the petitioner's solicitor appears, and vice versa; the necessity of one or other address arises because creditors who wish to appear must send notice to the petitioner or his solicitor;
- 25 (3) if the address of the company which appears is of a recent previous registered office, readvertisement will often be dispensed with, as creditors will be as likely to know the old address of the company as a new address;
- 26 (4) omission of, or error in, the date of presentation of the petition is usually immaterial and will be waived.

Save as mentioned in heads (1)-(4) supra, and as set out in the text and cases referred to in notes 16-19 supra, any further defects in the petition are likely to necessitate readvertisement.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

463 Contents of advertisement

TEXT AND NOTES--See SI 1986/1925 r 4.6A (injunction to restrain presentation or advertisement of petition) (added by SI 2010/686).

TEXT AND NOTES 1-15--SI 1986/1925 r 4.11 substituted by SI 2009/642 and amended by SI 2009/2472.

NOTE 10--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

NOTE 8--SI 1986/1925 r 4.11(5) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/464. Certificate of compliance.

464. Certificate of compliance.

The petitioner or his solicitor¹ must, at least five days before the hearing of the petition, file in court² a certificate of compliance³ with the rules relating to service and advertisement⁴.

The certificate must show the date of presentation of the petition⁵, the date fixed for the hearing⁶, and the date or dates on which the petition was duly served and advertised⁷; and a copy of the advertisement of the petition must also be filed in court with that certificate⁸.

Non-compliance with these provisions is a ground on which the court may, if it thinks fit, dismiss the petition⁹.

1 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

2 For the meaning of 'file in court' see para 129 note 3 ante.

3 For the prescribed form of certificate of compliance see the Insolvency Rules 1986, SI 1986/1925, rr 4.7, 12.7, Sch 4 Form 4.7.

4 Ibid r 4.14(1). As to the rules relating to service and advertisement see paras 461-463 ante. In the High Court the time for filing the certificate of compliance and copy of the advertisement of the petition is extended to not later than 4.30 pm on the Friday preceding the day on which the petition is to be heard, and applications to file after that time will only be allowed if some good reason is shown for the delay: *Practice Direction--Insolvency Proceedings* para 3.1.

5 Insolvency Rules 1986, SI 1986/1925, r 4.14(2)(a).

6 Ibid r 4.14(2)(b).

7 Ibid r 4.14(2)(c).

8 Ibid r 4.14(2).

9 Ibid r 4.14(3). Under the analogous provisions in the Companies (Winding-up) Rules 1949, SI 1949/330, r 33 (revoked) compliance was generally considered imperative: see *Practice Note* [1984] 2 All ER 678; *Re Shusella Ltd* [1983] BCLC 505. Cf *Re a Company (No 002791 of 1986)* (1986) 2 BCC 99, 281.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

464 Certificate of compliance

NOTE 1--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

NOTE 3--SI 1986/1925 Sch 4, Form 4.7 amended: SI 2009/642.

TEXT AND NOTES 5-8--SI 1986/1925 r 4.14(2) amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/465. Persons entitled to copy of petition.

465. Persons entitled to copy of petition.

Every director, contributory or creditor of the company is entitled to be furnished by the solicitor¹ for the petitioner (or by the petitioner himself, if acting in person) with a copy of the petition within two days after requiring it, on payment of the appropriate fee².

¹ For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

² Insolvency Rules 1986, SI 1986/1925, r 4.13. 'The appropriate fee' means 15 pence per A4 or A5 page, and 30 pence per A3 page: rr 13.1, 13.11(b).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

465 Persons entitled to copy of petition

NOTE 1--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/466. Affidavits verifying and in opposition to petition.

466. Affidavits verifying and in opposition to petition.

The petition must be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief¹. If the petition is in respect of debts due to different creditors, the debts to each creditor must be separately verified²; and the petition must be exhibited to the affidavit verifying it³.

The affidavit must be made:

- 925 (1) by the petitioner or, if there are two or more petitioners, any one of them⁴;
- 926 (2) by some person such as a director, company secretary or similar company officer, or a solicitor who has been concerned in the matters giving rise to the presentation of the petition⁵; or
- 927 (3) by some responsible person who is duly authorised to make the affidavit and has the requisite knowledge of those matters⁶.

Where the deponent is not the petitioner himself, or one of the petitioners, he must in the affidavit identify himself and state the capacity in which, and the authority by which, he makes it⁷, and the means of his knowledge of the matters sworn to in the affidavit⁸. The affidavit is prima facie evidence of the statements in the petition to which it relates⁹.

An affidavit verifying more than one petition must include in its title the names of the companies to which it relates and must set out, in respect of each company, the statements relied on by the petitioner; and a clear and legible photocopy of the affidavit must be filed with each petition which it verifies¹⁰. The affidavit verifying the petition must be filed upon presentation of the petition¹¹.

If the company intends to oppose the petition, its affidavit in opposition must be filed in court¹² not less than seven days before the date fixed for the hearing¹³. A copy of the affidavit must be sent by the company to the petitioner, forthwith after filing¹⁴.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.12(1). As to the admissibility of hearsay evidence on petitions see para 470 post. For the prescribed general form of affidavit verifying a petition see rr 4.12, 12.7, Sch 4 Form 4.3.

2 Ibid r 4.12(2).

3 Ibid r 4.12(3).

4 Ibid r 4.12(4)(a).

5 Ibid r 4.12(4)(b). A solicitor who swears an affidavit verifying a petition acts improperly if he asserts on oath a belief that a debt is owing and that the company is insolvent when he does not have that belief, and acts unreasonably if there are no grounds upon which a competent solicitor could reach that view on the material available to him: *Re a Company (No 006798 of 1995)* [1996] 1 WLR 491, [1996] 2 BCLC 48. He may, therefore, be liable to pay the company's costs wasted in relation to the petition: *Re a Company (No 006798 of 1995)* supra.

6 Insolventcy Rules 1986, SI 1986/1925, r 4.12(4)(c).

7 Ibid r 4.12(5)(a).

8 Ibid r 4.12(5)(b).

9 Ibid r 4.12(6).

10 Ibid r 4.12(7).

11 See para 460 notes 1, 2 ante.

12 For the meaning of 'file in court' see para 129 note 3 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 4.18(1). The time limit does not apply to opposing creditors: *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145.

14 Insolvency Rules 1986, SI 1986/1925, r 4.18(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

466 Affidavits verifying and in opposition to petition

NOTE 1--SI 1986/2925 r 4.12 amended, Sch 4 Form 4.3 revoked: SI 2005/527.

NOTE 3--SI 1986/1925 r 4.12(3) substituted by r 4.12(3A): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/A. PETITION PRESENTED OTHER THAN BY ONE OR MORE CONTRIBUTORIES/467. Withdrawal of petition.

467. Withdrawal of petition.

If at least five days before the hearing the petitioner, on a without notice application, satisfies the court that:

- 928 (1) the petition has not been advertised; and
- 929 (2) no notices, whether in support or in opposition, have been received by him with reference to the petition¹; and
- 930 (3) the company consents to the withdrawal of the petition,

the court may order that the petitioner has leave to withdraw the petition on such terms as to costs as the parties may agree².

¹ See further para 471 post. It is, however, unnecessary for formal notice (ie under the provisions referred to in para 471 post) to have been given: see *Re Wavern Engineering Co Ltd* (1987) 3 BCC 3.

² Insolvency Rules 1986, SI 1986/1925, r 4.15. For the prescribed form of order see rr 4.15, 12.7, Sch 4 Form 4.8.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/B. PETITION PRESENTED BY ONE OR MORE CONTRIBUTORIES/468. Form, contents, presentation and service of petition.

B. PETITION PRESENTED BY ONE OR MORE CONTRIBUTORIES

468. Form, contents, presentation and service of petition.

Every petition presented by one or more contributories¹ must specify the grounds on which it is presented, and must be filed in court² with one copy for service³. No petition may, however, be filed unless there is produced with it the receipt for the deposit payable on presentation⁴.

The court must fix a hearing for a day ('the return day') on which, unless the court otherwise directs, the petitioner and the company must attend before the registrar in chambers for directions to be given in relation to the procedure on the petition⁵. On fixing the return day, the court must return to the petitioner a sealed copy of the petition for service, indorsed with the return day and time of hearing⁶. The petitioner must, at least 14 days before the return day, serve a sealed copy of the petition on the company⁷.

Whenever a winding up order is asked for in a contributory's petition, the petition must state whether the petitioner consents or objects to a 'section 127 order' in the standard form⁸. If he objects, the written evidence in support must contain a short statement of his reasons⁹. If the petition contains a statement that the petitioner consents to a 'section 127 order', whether in the standard or a modified form, but the petitioner changes his mind before the first hearing of the petition, he must notify the respondents and may apply on notice to a judge for an order directing that no 'section 127 order' or a modified order only (as the case may be) may be made by the registrar, but validating dispositions made without notice of the order made by the judge¹⁰. If the petition contains a statement that the petitioner consents to a 'section 127 order', whether in the standard or a modified form, the registrar must without further enquiry make an order in such form at the first hearing unless an order to the contrary has been made by the judge in the meantime¹¹. If the petition contains a statement that the petitioner objects to a 'section 127 order' in the standard form, the company may apply (in the case of urgency, without notice) to the judge for an order¹².

Where a member state liquidator¹³ has been appointed in main proceedings¹⁴ in relation to the company, the petitioner must send a copy of the petition to him¹⁵.

1 In a petition for winding up: see the Insolvency Rules 1986, SI 1986/1925, r 4.2(4). For the meaning of 'contributory' see para 703 post. Rule 4.16 (notice of intention to appear: see para 471 post), r 4.17 (list of persons appearing: see para 472 post), r 4.20 (notice and settling of winding-up order: see paras 484-485 post), r 4.21 (as amended) (transmission and advertisement of order: see para 486 post) and r 4.21A (as added) (expenses of voluntary arrangement: see para 484 post) apply, with the necessary modifications, to a petition presented by contributories: r 4.24 (amended by SI 1987/1919).

2 For the meaning of 'file in court' see para 129 note 3 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.22(1) (amended by SI 1987/1919). For the prescribed form of petition by a contributory see the Insolvency Rules 1986, SI 1986/1925, rr 4.22, 12.7, Sch 4 Form 4.14 (substituted by SI 1987/1919). Where a contributory does not seek a winding-up order, but petitions for other relief on the grounds of unfairly prejudicial conduct, there are separate analogous provisions governing the practice and procedure on such a petition: see COMPANIES vol 14 (2009) PARA 472. Rule 4.22 (as amended), r 4.23 (return of petition: see para 469 post) and r 4.24 (as amended) (see the text and note 1 supra) apply also to petitions presented by an administrator or supervisor under a voluntary arrangement of the company: r 4.7(9). See para 459 ante.

- 4 Ibid r 4.22(1A) (added by SI 1987/1919). As to the deposit payable on presentation of the petition see para 474 post. See also para 1055 post.
- 5 Insolvency Rules 1986, SI 1986/1925, r 4.22(2).
- 6 Ibid r 4.22(3).
- 7 Ibid r 4.22(4).
- 8 *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(2). For the standard form of order see *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(7). The standard form of order may be departed from where the circumstances of the case require: *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(7). As to validation orders under the Insolvency Act 1986 s 127 (as amended) see further para 700 post.
- 9 *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(2). If the petitioner objects to a 'section 127 order' in the standard form but consents to such an order in a modified form, the petition must set out the form of order to which he consents, and the written evidence in support must contain a short statement of his reasons for seeking the modification: *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(3).
- 10 *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(4).
- 11 *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(5).
- 12 *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(6).
- 13 For the meaning of 'member state liquidator' see para 460 note 15 ante.
- 14 For the meaning of 'main proceedings' see para 460 note 16 ante.
- 15 Insolvency Rules 1986, SI 1986/1925, r 4.22(5) (added by SI 2002/1307).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

468 Form, contents, presentation and service of petition

NOTE 3--SI 1986/1925 Sch 4 Form 4.14 substituted by SI 2005/527 and amended by SI 2009/2472.

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469. Return of petition.

On the return day¹, or at any time after it, the court must give such directions as it thinks appropriate with respect to the following matters:

- 931 (1) service of the petition², whether in connection with the venue³ for a further hearing, or for any other purpose⁴;
- 932 (2) whether particulars of claim and defence are to be delivered, and generally as to the procedure on the petition⁵;
- 933 (3) whether, and if so by what means, the petition is to be advertised⁶;
- 934 (4) the manner in which any evidence is to be adduced at any hearing before the judge and, in particular, as to the taking of evidence wholly or in part by affidavit or orally, the cross-examination of any deponents to affidavits, and the matters to be dealt with in evidence⁷;
- 935 (5) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition⁸.

In giving directions for the service of the petition, the court must have regard to whether any of the persons, other than the company, who must be served with copies of a winding-up petition presented other than by one or more contributories⁹ should be served with a copy of the petition¹⁰.

If the petition contains a statement that the petitioner consents to a 'section 127 order', whether in the standard or a modified form, the registrar must without further inquiry make an order in such form at the first hearing unless an order to the contrary has been made by the judge in the meantime¹¹.

1 For the meaning of 'the return day' see para 468 ante.

2 As to the application of the Insolvency Rules 1986, SI 1986/1925, r 4.23, to petitions presented by an administrator or supervisor under a voluntary arrangement of the company see para 468 note 3 ante.

3 For the meaning of 'venue' see para 91 note 7 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.23(1)(a).

5 Ibid r 4.23(1)(b).

6 Ibid r 4.23(1)(c).

7 Ibid r 4.23(1)(d).

8 Ibid r 4.23(1)(e).

9 Ie those persons specified in ibid r 4.10 (as amended): see para 461 ante.

10 Ibid r 4.23(2).

11 *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9(5). As to the contents of such a petition see para 468 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/470. Admissibility of hearsay evidence.

C. PROCEDURE COMMON TO ALL PETITIONS

470. Admissibility of hearsay evidence.

There is no general principle that hearsay evidence is admissible in relation to a winding-up petition; and it seems that the normal rules as regards hearsay evidence which apply to civil proceedings apply also in relation to winding-up petitions¹. In relation to winding-up petitions there are, however, special categories of material to which the court must give due consideration, even though they may amount to hearsay²:

- 936 (1) the statutory affidavit³ verifying the petition is admissible for the purpose of providing evidence of the truth of the petition⁴;
- 937 (2) on a petition by the Secretary of State⁵, the inspectors' reports may be taken into account by the court⁶, and may be sufficient basis for the making of a winding-up order in an uncontested case⁷.

The court will rarely make an order for cross-examination of deponents to affidavits in relation to a disputed winding-up petition⁸.

1 *Re Koscot Interplanetary (UK) Ltd, Re Koscot AG* [1972] 3 All ER 829 at 833 per Megarry J. As to affidavits see also para 1076 et seq post. As to hearsay evidence and its admissibility generally see CIVIL PROCEDURE vol 11 (2009) PARA 806 et seq.

2 *Re Koscot Interplanetary (UK) Ltd, Re Koscot AG* [1972] 3 All ER 829 at 833 per Megarry J.

3 See para 466 ante.

4 *Re Koscot Interplanetary (UK) Ltd, Re Koscot AG* [1972] 3 All ER 829 at 833 per Megarry J.

5 See under the Insolvency Act 1986 s 124A (as added): see para 444 ante. As to the Secretary of State see para 11 note 10 ante.

6 See *Re Koscot Interplanetary (UK) Ltd, Re Koscot AG* [1972] 3 All ER 829 at 833 per Megarry J. See also the cases cited in note 7 infra.

7 *Re Travel and Holiday Clubs Ltd* [1967] 2 All ER 606, [1967] 1 WLR 711; *Re SBA Properties Ltd* [1967] 2 All ER 615, [1967] 1 WLR 799; *Re Allied Produce Co Ltd* [1967] 3 All ER 399n, [1967] 1 WLR 1469 (decisions on petitions under the Companies Act 1948 s 169(3) (repealed): see now the Insolvency Act 1986 s 124A (as added); para 444 ante). It has been said that the inspectors' reports are to be treated not as evidence in the ordinary sense but as material on which, if it is not challenged, the court may proceed to make an order if it is just and equitable to do so: *Re SBA Properties Ltd* supra at 621 and 806 per Pennycuik J. It seems doubtful whether the court would make an order on the basis of inspectors' reports in a contested case: see *Re ABC Coupler and Engineering Co Ltd (No 2)* [1962] 3 All ER 68, [1962] 1 WLR 1236 (a decision on a petition under the Companies Act 1948 s 169(3) (repealed), where the petition was dismissed); *Re Allied Produce Co Ltd* supra at 400 and 1471 per Buckley J. See also *Re St Piran Ltd* [1981] 3 All ER 270, [1981] 1 WLR 1300; *Re Armvent Ltd* [1975] 3 All ER 441, [1975] 1 WLR 1679 (report, even if challenged, would be treated as prima facie evidence).

8 *Re a Company (No 00962 of 1991), ex p Electrical Engineering Contracts (London) Ltd* [1992] BCLC 248. The jurisdiction to make such an order is under the Insolvency Rules 1986, SI 1986/1925, r 7.7: see para 1077 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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471. Notice of intention to appear.

Every person who intends to appear on the hearing of the petition must give to the petitioner notice of his intention¹ specifying:

- 938 (1) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf²;
- 939 (2) whether his intention is to support or oppose the petition³; and
- 940 (3) the amount and nature of his debt⁴.

The notice must be sent to the petitioner at the address shown for him in the court records, or in the advertisement of the petition⁵; or it may be sent to his solicitor⁶. The notice must be sent so as to reach the addressee not later than 16.00 hours on the business day⁷ before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing)⁸.

A person failing to comply with these requirements may appear on the hearing of the petition only with the leave of the court⁹.

1 Insolvent Rules 1986, SI 1986/1925, r 4.16(1). This implies an entitlement to both appear and to address the court: *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145.

2 Insolvent Rules 1986, SI 1986/1925, r 4.16(2)(a). For the prescribed form of notice of intention to appear see rr 4.16, 12.7, Sch 4 Form 4.9. Provision is made in Form 4.9 for the description of a contributory's holding of shares. In the case of a person claiming rectification of the register, the notice does not operate as an election to be treated as a shareholder: *Re Thomas Edward Brinsmead & Sons, Tomlin's Case* [1898] 1 Ch 104 at 108-109. If the form of the notice is defective (eg it fails to show whether the person giving it intends to oppose or support the petition), the costs of the persons appearing may be disallowed, even if, at the hearing, they support the successful side: see *Re Green, McAllan and Feilden Ltd* [1891] WN 127; *Re Sheringham Development Co Ltd* (1893) 37 Sol Jo 175. As to the costs allowed to supporting or opposing creditors or contributories see para 482 post.

3 Insolvent Rules 1986, SI 1986/1925, r 4.16(2)(b).

4 *Ibid* r 4.16(2)(a).

5 *Ibid* r 4.16(3). The petitioner's address must be stated in the advertisement: see r 4.11(4)(b); and para 463 ante.

6 *Ibid* r 4.16(3). For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

7 For the meaning of 'business day' see para 113 note 4 ante.

8 Insolvent Rules 1986, SI 1986/1925, r 4.16(4).

9 *Ibid* r 4.16(5). As to the court's discretion to allow a creditor who has not given notice of his intention to appear to go on to the list of supporting creditors at a late hour see *Re M McCarthy & Co (Builders) Ltd* [1976] 2 All ER 338n. The court will generally grant leave as a matter of course, but on condition that the person wishing

to appear gives an undertaking not to seek his costs of appearing on the petition: see *Practice Note* [1976] 1 WLR 515.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

471 Notice of intention to appear

NOTE 6--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

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472. List of persons appearing.

The petitioner must prepare a list of the persons, if any, who have given notice of their intention to appear, specifying their names and addresses and, if known to him, their respective solicitors¹. There must be stated against the name of each creditor in the list whether his intention is to support the petition or oppose it². On the day appointed for the hearing of the petition, a copy of the list must be handed to the court before the commencement of the hearing³. If any leave is given to a person to appear on the hearing of the petition who has not given the requisite notice of intention to appear⁴, the petitioner must add to the list the same particulars in respect of the person to whom leave has been given⁵.

1 Insolvent Rules 1986, SI 1986/1925, r 4.17(1). For the prescribed form of list see rr 4.17, 12.7, Sch 4 Form 4.10. For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

2 Insolvent Rules 1986, SI 1986/1925, r 4.17(2). Although omitted from r 4.17, the prescribed form (see note 1 *supra*) also makes provision for the amount owed to the creditor; and, in the case of a contributory, the number of shares held, and whether the contributory intends to support the petition or oppose it.

3 *Ibid* r 4.17(3).

4 *Ie* under *ibid* r 4.16(5): see para 471 *ante*.

5 *Ibid* r 4.17(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

472 List of persons appearing

NOTE 1--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

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473. Stay of proceedings etc.

At any time after the presentation of the winding-up petition, and before the winding-up order, the company, or any creditor or contributory, may apply to have pending litigation against the company stayed or restrained¹, or to have a provisional liquidator appointed².

1 See the Insolvency Act 1986 s 126; and para 887 post.

2 See *ibid* s 135; and para 491 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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474. Deposit payable on presentation of petition.

Before a winding-up petition can be presented, a deposit must be paid to the court in which the petition is to be presented¹. Such deposit stands as security for the payment of the fee chargeable in respect of the performance by the official receiver of his general duties as official receiver on the making of a winding-up order together with any fees payable in connection with the appointment of an insolvency practitioner by the court², and must be used to discharge those fees to the extent that the assets of the company are insufficient for that purpose³. The court must transmit the deposit paid to the official receiver attached to the court⁴. If the petition is dismissed or withdrawn, the deposit must be repaid to the person who made it⁵. If a winding-up order is made, any deposit made must be returned to the person who made it save to the extent that the company's assets are insufficient to discharge the fees for which the deposit is security⁶.

1 See the Insolvency Proceedings (Fees) Order 2004, SI 2004/593, art 6. The deposit required is a deposit of £620: see art 6(1)(a).

2 Ibid arts 6(1), (2), 4 Schedule 2. As to the official receiver see para 503 et seq post. As to the official receiver's duties on the making of a winding-up order see para 510 et seq post. The receipt by the official receiver of any deposit which relates to a winding-up petition may not be contracted out: see para 506 post. As to the contracting out of the official receiver's functions generally see paras 505-506 post.

3 Ibid art 6(1), (2).

4 Ibid art 6(3).

5 Ibid art 6(4). As to the withdrawal of the petition see para 467 ante.

6 Ibid art 6(5). This applies in any case, including where the order is subsequently annulled, rescinded or recalled: art 6(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

474 Deposit payable on presentation of petition

NOTE 1--For '£620' read '£715': SI 2004/493 art 6(1)(a) (amended by SI 2009/645).

TEXT AND NOTES 2, 3--SI 2004/593 art 6(1), Sch 2 amended by SI 2005/544, SI 2009/645; art 6(2) amended by SI 2005/544.

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475. Security for costs.

Security for costs¹ may be ordered to be given by a petitioner who has given a false address², or who has presented a bankruptcy petition³, or by a petitioning company which is in liquidation or which, it appears to the court, there is reason to believe will be unable to pay its debts⁴, or by a petitioner who is ordinarily residing abroad, including Scotland⁵, unless he is a judgment creditor⁶, or his claim is admitted⁷. Even in these cases security will be ordered if a voluntary winding up is pending and the liquidator alleges that he has no assets⁸. A shareholder out of the jurisdiction who opposes a petition cannot be ordered to give security⁹.

1 As to security for costs generally see CPR 25.12-25.14; and CIVIL PROCEDURE vol 11 (2009) PARAS 745-748.

2 *Re Sturgis (British) Motor Power Syndicate Ltd* (1885) 53 LT 715.

3 *Malcolm v Hodgkinson* (1873) LR 8 QB 209; *Brocklebank & Co v Kings Lynn Steamship Co* (1878) 3 CPD 365; *Re Carta Para Mining Co* (1881) 19 ChD 457.

4 See the Companies Act 1985 s 726; and COMPANIES vol 14 (2009) PARA 308. Section 726 applies to both winding-up petitions under the Insolvency Act 1986 s 124 (as amended) (see para 444 et seq ante) and petitions under the Companies Act 1985 s 459 (as amended) (see COMPANIES vol 14 (2009) PARA 466): *Re Unisoft Group Ltd, Saunderson Holdings Ltd v Unisoft Group Ltd* [1993] BCLC 1292, [1994] BCC 11, CA.

5 *Re Royal Bank of Australia, ex p Latta* (1850) 3 De G & Sm 186; *Re Home Assurance Association (No 2)* (1871) LR 12 Eq 112; *Fontaine's Case* (1889) 41 ChD 118, CA; *Re East Llangynog Lead Mining Co* (1875) 23 WR 587.

See now, however, CPR r 25.13, under which it is provided that where a defendant applies for security for his costs of the proceedings, and it appears to the court that:

- 27 (1) the claimant is resident out of the jurisdiction but is not resident in a Brussels contracting state, a Lugano contracting state or a Regulation state (CPR 25.13(2)(a));
- 28 (2) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so (CPR 25.13(2)(c));
- 29 (3) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation (CPR 25.13(2)(d));
- 30 (4) the claimant failed to give his address in the claim form, or gave an incorrect address in that form (CPR 25.13(2)(e));
- 31 (5) the claimant (not being a claimant who is suing in a representative capacity) is acting as a nominal claimant, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so (CPR 25.13(2)(f)); or
- 32 (6) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him (CPR 25.13(2)(g)),

then if, having regard to all the circumstances of the case, the court is satisfied that it is just to do so, it may order the claimant to give such security for the defendant's costs as it thinks just (CPR 25.13(1)). See also Case C-398/92 *Firma Mund & Fester v Firma Hatrex International Transport* [1994] ECR I-467, ECJ; *Fitzgerald v Williams* [1996] QB 657, [1996] 2 All ER 171, CA; and CIVIL PROCEDURE vol 11 (2009) PARAS 745-748. As to the Brussels and Lugano contracting states, and for the meaning of 'Regulation state', see CONFLICT OF LAWS vol 8(3) (Reissue) para 65.

- 6 *Re Contract and Agency Corp'n Ltd* (1887) 57 LJ Ch 5.
- 7 *Re Alabama Portland Cement Co Ltd* (1909) 25 TLR 691.
- 8 *Re Alabama Portland Cement Co Ltd* (1909) 25 TLR 691.
- 9 *Re Percy and Kelly, Nickel, Cobalt and Chrome Iron Mining Co* (1876) 2 ChD 531.

UPDATE

438-938 Winding Up by the Court

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476. Hearing of petition.

A winding-up petition must be heard in open court¹. Only the petitioner, the company, the creditors, the contributories², and the other persons upon whom a petition may be served³, are entitled to appear on the petition; other parties have no right to be heard, and, even if the court of first instance elects to hear them as amici curiae, they have no right of appeal⁴. A voluntary liquidator is allowed to appear but he should be impartial, his presence being merely to assist the court⁵.

¹ See *Practice Direction--Insolvency Proceedings* para 5.3(1). As to applications to the court see para 1055 post.

² For the meaning of 'contributory' see para 703 post.

³ See the Insolvency Rules 1986, SI 1986/1925, r 4.10 (as amended) (cited in para 461 ante) and r 4.23 (cited in para 469 ante).

⁴ *Re Bradford Navigation Co* (1870) 5 Ch App 600; and see para 471 ante. On an application to rescind a winding-up order under the Insolvency Rules 1986, SI 1986/1925, r 7.47(1) (see para 1030 post), the court may give leave to be heard to any persons who might have appeared on the hearing of the petition: *Re Dollar Land (Feltham) Ltd* [1995] 2 BCLC 370, [1995] BCC 740.

⁵ *Re Medisco Equipment Ltd* [1983] BCLC 305; *Re Roselmar Properties Ltd (No 2)* (1986) 2 BCC 99, 157; and see para 482 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/477. Court's powers on hearing petition.

477. Court's powers on hearing petition.

On hearing the petition, the court may dismiss it or adjourn¹ the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit². The court must, however, act only according to what is alleged in the petition and proved before it³. On appeal, the Court of Appeal may review any exercise of discretion by the court in accordance with the normal principles governing the review by a superior court of a discretion exercised by an inferior court⁴. The court may not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets⁵. Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up⁶, the court, if of the opinion that the petitioners are entitled to relief either by winding up or by some other means, and that in the absence of any other remedy winding up would be just and equitable, must make a winding-up order unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking a winding-up order instead of pursuing that other remedy⁷.

The court has power to give permission to the petitioner to amend the petition so as to include a debt which had not fallen due when the petition was presented⁸.

1 As to adjournments in the case of a disputed debt see para 452 ante; and see *Re Amalgamated Properties of Rhodesia (1913) Ltd* [1917] 2 Ch 115, CA (where the court refused an adjournment pending an appeal from a judgment in respect of which a statutory demand had been served). See also para 478 post. In *Re LHF Wools Ltd* [1970] Ch 27, [1969] 3 All ER 882, CA, where the petition was based on a judgment debt and where there was a genuine cross-claim against the petitioning creditor, the question whether a winding-up order should be made was held to be in the judge's discretion. See now *Re Bayoil SA, Seawind Tankers Corp v Bayoil SA* [1999] 1 All ER 374, [1999] 1 BCLC 62, CA; *Re Richbell Information Services Inc* (1999) Times, 21 January; *Montgomery v Wanda Modes Ltd* [2002] 1 BCLC 289, [2000] BPIR 457, ChD; and para 452 ante. See also *Re Euro Hotel (Belgravia)* [1975] 3 All ER 1075. A company's prospects of procuring future assets before it is obliged to satisfy future liabilities are relevant to the exercise of the court's discretion in deciding whether or not to make a winding-up order or to grant a short adjournment: *Byblos Bank SAL v Al-Khudhairy* [1987] BCLC 232, CA.

2 Insolvency Act 1986 s 125(1). An order has been made subject to the petition being amended: *Re Queen's Benefit Building Society* (1871) 6 Ch App 815. An amendment has been allowed at the hearing of the petition where the company relied on a demurrer: *Re White Star Consolidated Gold Mining Co* (1883) 48 LT 815. A creditor appearing cannot insist that the petition be disposed of: *Re Norton Iron Co* (1877) 47 LJ Ch 9; *Re Margate Hotel Co* [1888] WN 73. There is no jurisdiction under the Insolvency Act 1986 s 125(1) to award damages to the company on the ground that the petition was prosecuted maliciously: *Partizan Ltd v OJ Kilkenny & Co Ltd* [1998] 1 BCLC 157, [1998] 1 BCC 912. Proceedings for damages for malicious prosecution should be commenced by claim form and not by application under the Insolvency Act 1986, and the tort requires proof that: (1) the petition terminated in favour of the company; (2) there was absence of reasonable or probable cause for presenting the petition; and (3) there was malice or improper motive on the part of the petitioner: *Partizan Ltd v OJ Kilkenny & Co Ltd* supra.

3 *Re Fildes Bros Ltd* [1970] 1 All ER 923, [1970] 1 WLR 592.

4 See *Re LHF Wools Ltd* [1970] Ch 27, [1969] 3 All ER 882, CA; *Re P and J Macrae Ltd* [1961] 1 All ER 302, [1961] 1 WLR 229, CA.

5 Insolvency Act 1986 s 125(1); and see note 1 supra; paras 457 note 2 ante, 481 note 1 post.

6 See *ibid* s 122(1)(g); and paras 444, 448-449 ante. For the meaning of 'contributory' see para 703 post.

7 Ibid s 125(2). See *Re a Company (No 002567 of 1982)* [1983] 2 All ER 854, [1983] 1 WLR 927; *Coulson, Sanderson and Ward v Ward* [1986] PCC 57, CA. This provision relates only to petitions by members of the company in the capacity of contributories; cf para 457 ante. See also para 449 text and note 22 ante.

8 *Re Richbell Strategic Holdings Ltd* [1997] 2 BCLC 429.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

477 Court's powers on hearing petition

NOTE 1--As to the requirement for a petitioner to give notice where a petition is dismissed, see SI 1986/1925 r 4.21B (added by SI 2009/642, amended by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/478. Adjournment of petition.

478. Adjournment of petition.

Adjournments of hearings of winding-up petitions for the purposes of enabling evidence to be completed, witnesses cross-examined, compromises arrived at or reconstructions carried out are of frequent occurrence; but long unconditional adjournments may do great harm, not only by paralysing the company, but also by invalidating intermediate transactions¹ if a winding-up order, which relates back to the presentation of the petition², is ultimately made³. An adjournment will not be allowed pending an appeal by the company to the House of Lords in respect of the debt on which the petition is founded where the company is unwilling to give security for costs already incurred in the litigation⁴.

Where an adjournment for a considerable time is allowed, it is often on the terms that the company undertakes not to consent to a winding-up order on any other petition and not to wind up voluntarily, to give notice to the petitioner of the presentation of any other winding-up petition, and, on the presentation of any other petition, to consent to the present application for winding up being restored so that the court may be able to deal with it as if there had been no adjournment⁵.

Adjournments of a winding-up petition may be granted at the request of administrative receivers or the debenture holders who appointed them, often on the ground that a winding-up order will terminate the receivers' agency for the company and thus compromise the receivers' ability to trade the company and sell it as a going concern⁶.

1 See the Insolvency Act 1986 s 127 (as amended); and para 700 et seq post.

2 See *ibid* s 129 (as amended); and para 489 post.

3 See *Re Chapel House Colliery Co* (1883) 24 ChD 259 at 267, CA; and see *Bowes v Directors of Hope Life and Insurance Guarantee Co* (1865) 11 HL Cas 389; *Re Metropolitan Rly Warehousing Co* (1867) 36 LJ Ch 827 at 830; *Re Great Western (Forest of Dean) Coal Consumers' Co* (1882) 21 ChD 769; *Re Western of Canada Oil, Lands and Works Co* (1873) LR 17 Eq 1; *Re Boston Timber Fabrications Ltd* [1984] BCLC 328, CA.

4 *Re British Liquid Air Co* (1908) 126 LT Jo 77, CA; and see *Re Amalgamated Properties of Rhodesia (1913) Ltd* [1917] 2 Ch 115, CA.

5 *Re St Thomas' Dock Co* (1876) 2 ChD 116 at 122 (where the order was never drawn up); *Re St Neots Water Co* (1905) 93 LT 788. Lengthy adjournments of winding-up petitions are often granted in the case of insurance companies which have been placed into provisional liquidation, normally for the purpose of protecting the creditors and assets of the company pending a scheme of arrangement under the Companies Act 1985 s 425 (as amended) (see COMPANIES vol 15 (2009) PARA 1425 et seq). The application for adjournment, often for a period of about six months, is normally made by the provisional liquidators themselves. Such provisional liquidations arose because the administration procedure was not generally available for insurance companies: see now, however, the Insolvency Act 1986 Sch B1 para 9(2), (3) (as added); the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 3 (amended by SI 2003/2134; SI 2004/353); and para 213 ante.

6 See *Re Northern Developments (Holdings) Ltd* (16 June 1976, unreported); *Re Demaglass Holdings Ltd* [2001] 2 BCLC 633, where the principles applied by the court in exercising its discretion to adjourn a petition are discussed.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

478 Adjournment of petition

TEXT AND NOTES--See SI 1986/1925 r 4.18A (adjournment) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/479. Substitution of petitioner.

479. Substitution of petitioner.

The court may, on such terms as it thinks just, substitute as petitioner any creditor or contributory who, in its opinion, would have a right to present a petition, and who is desirous of prosecuting the petition¹, where a person petitions and is subsequently found not to be entitled to do so or where the petitioner:

- 941 (1) fails to advertise his petition within the prescribed time or such extended time as the court may allow²; or
- 942 (2) consents to withdraw³ his petition, or to allow it to be dismissed⁴, consents to an adjournment, or fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing, or on any day to which it is adjourned⁵; or
- 943 (3) appears but does not apply for an order in the terms of the prayer of his petition⁶.

An order to substitute a petitioner may be made by the court at any time where a petitioner fails to advertise his petition within the prescribed time or consents to withdraw his petition⁷. Where a debt is assigned after presentation of the petition, the assignee may be substituted as petitioner⁸. If a petitioner has been misnamed in the petition, as opposed to being non-existent, a supporting creditor may be substituted⁹.

Where a member state liquidator¹⁰ has been appointed in main proceedings¹¹ in relation to the company, without prejudice to the court's power to substitute as petitioner any person, creditor or contributory who in its opinion would have a right to present a petition and who is desirous of prosecuting it, the court may, on such terms as it thinks just, substitute the member state liquidator as petitioner where he is desirous of prosecuting the petition¹².

1 Insolvent Rules 1986, SI 1986/1925, r 4.19(2). The court's power to make an order for substitution does not extend to petitions presented by one or more contributories: see rr 4.2(4), 4.24 (amended by SI 1987/1919). Where the Secretary of State decides not to proceed with a petition presented on public interest grounds, contributories will not normally be substituted as petitioners: *Re Xyllyx plc* [1992] BCLC 376. For the meaning of 'contributory' see para 703 post. As to the Secretary of State see para 11 note 10 ante.

2 Insolvent Rules 1986, SI 1986/1925, r 4.19(1)(a). As to extension of time see para 462 note 5 ante.

3 There can be no withdrawal without an order giving leave to this effect: *Hepburn and Ross v Tritonia Ltd* 1951 SLT (Sh Ct) 6; *Re Mid Wales Hotel Co Ltd* (1868) 17 LT 597. See also para 467 ante.

4 A petitioner may consent to his petition being dismissed: see *Re Times Life Assurance and Guarantee Co* (1869) LR 9 Eq 382; *Re Hereford and South Wales Waggon and Engineering Co* (1874) LR 17 Eq 423 (creditors appearing on petition entitled to costs).

5 Insolvent Rules 1986, SI 1986/1925, r 4.19(1)(b). When the petitioner does not appear and abandons his petition, an appearing creditor is entitled to his costs: see *Re Anglo-Virginian Freehold Land Co* [1880] WN 155.

6 Insolvent Rules 1986, SI 1986/1925, r 4.19(1)(c). As to the procedure when a new petitioner is substituted see *Re Invicta Works Ltd* (1894) 38 Sol Jo 290. Following an order for substitution of a creditor, the usual order will be for the petition to be amended and re-served on the company, for a new affidavit of service to be sworn, and for readvertisement. If the company appears at the hearing of the petition where substitution is ordered, formal re-service is often dispensed with. An appropriate adjournment to allow completion of these

formalities will be granted. A petitioner cannot himself transfer to any other person the right to proceed with his petition: *Re Paris Skating Rink Co* (1877) 5 ChD 959, CA.

7 Insolvency Rules 1986, SI 1986/1925, r 4.19(3). As to costs see para 482 post.

8 *Perak Pioneer Ltd v Petroliaam Nasional Bhd* [1986] AC 849, [1986] 3 WLR 105, PC (decided under the analogous provisions applicable in Hong Kong).

9 *Re Goldthorpe & Lacey Ltd* (1987) 3 BCC 595, CA.

10 For the meaning of 'member state liquidator' see para 460 note 15 ante.

11 For the meaning of 'main proceedings' see para 460 note 16 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 4.19(2A) (added by SI 2002/1307).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/480. Wishes of creditors and contributories.

480. Wishes of creditors and contributories.

As to all matters relating to a winding up, the court may have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence¹. For the purpose of ascertaining those wishes, it may direct meetings of the creditors or contributories to be called, held and conducted in such manner as it directs², and may appoint a person to act as chairman of any such meeting and to report the result of it to the court³, although, if the court has no power to make a winding-up order, it cannot direct a meeting to be held⁴. In the case of creditors, regard must be had to the value of each creditor's debt⁵. In the case of contributories, regard must be had to the number of votes conferred on each contributory by the Companies Act 1985⁶ or by the articles⁷. The court may be satisfied as to the views of the general body of creditors or contributories without calling meetings⁸.

In the absence of special circumstances, the views of the creditors will normally be accepted; but the court retains a residuary discretion to depart from their views where there are special circumstances justifying the court in so doing⁹.

A creditor who cannot obtain payment is entitled as of right as against the company to a winding-up order¹⁰, but this is subject to the court's power on the hearing of the petition to give effect to the wishes of a majority of the creditors on the question whether a winding-up order should be made¹¹, and whether the petition should or should not stand over¹².

Although the court has a general discretion on the hearing of a winding-up petition, case law provides a guide as to how that discretion will be exercised¹³.

Where the company is not in voluntary liquidation, and the only fact which emerges is that the company is insolvent, opposing creditors must give reasons for their opposition, even if they represent the majority in number and value, for the court to take their opposition seriously¹⁴.

Where the company is in voluntary liquidation:

- 944 (1) if the petition is unopposed, a compulsory winding-up order will be granted to the petitioner as of right;
- 945 (2) if the petition is opposed by creditors, it is incumbent on the petitioner and any supporting creditors to give reasons why a compulsory winding-up order should be made;
- 946 (3) in assessing the weight to be attached to the support or opposition of creditors, the court will give less weight to those connected with the company than to independent trade creditors;
- 947 (4) in assessing the reasons put forward for support or opposition, the court will take account of only those reasons which are applicable to the class of creditors, and not reasons which are collateral to those class interests;
- 948 (5) creditors do not need to show any actual misconduct on the part of the voluntary liquidator, since an investigation into the company's affairs must not only be independent but must also be seen to be independent;
- 949 (6) the voluntary liquidator must be neutral and may not appear on the hearing to oppose it, but only to assist the court¹⁵.

Where the company is insolvent, the wishes of the creditors only are regarded¹⁶. In the case of creditors of different classes, the interest of the class particularly affected must be primarily considered. Thus, on the question of winding up a company whose assets are entirely covered by debentures, the wishes of the unsecured creditors must be regarded in preference to those of the secured creditors¹⁷. The creditors who are only partly secured and share the class interest of unsecured creditors in protecting or increasing the value of the company's assets are, however, entitled to the same consideration, in respect of the unsecured portion of their debt, as wholly unsecured creditors¹⁸. The wishes of creditors will be given weight only if they have reasons which relate to their position as creditors, and are not motivated by collateral purposes¹⁹.

On a shareholder's petition, where the creditors do not support or oppose the petition²⁰, or where the interests of shareholders only are concerned, as in a case where it is alleged that the substratum of a solvent company is gone, the wishes of the shareholders only will be regarded²¹.

In the case of a petition by a shareholder, the court will similarly give effect in general to the wishes of the majority of shareholders²², but it is not bound to accede to the wishes of the majority and the court may make a winding-up order even though the majority of shareholders wish the company to continue in existence if the substratum of the company has gone²³, or there are other grounds²⁴ why the company should be wound up²⁵, or it may make a compulsory order, even though the majority favours a voluntary winding up, if the majority is deceptive and does not represent the majority of the independent shareholders, or if in the circumstances a compulsory order will be more beneficial than a voluntary winding up²⁶. A minority must, however, give an adequate reason why its wishes should be followed²⁷.

Where the Secretary of State presents a petition in the public interest²⁸ his view must be given special weight and may outweigh the opposition of creditors who want a voluntary winding up²⁹.

1 Insolventy Act 1986 s 195(1)(a). For the meaning of 'contributory' see para 703 post.

2 Ibid s 195(1)(b). It seems that s 195 empowers the court to direct the forms of proxy to be used: *Re Dorman, Long & Co Ltd* [1934] Ch 635 at 660.

3 Insolventy Act 1986 s 195(1)(b). A meeting of the creditors was not required in *Re West Hartlepool Ironworks Co* (1875) 10 Ch App 618, where the wishes of the majority appeared from evidence. See also *Re Manmac Farmers Ltd* [1968] 1 All ER 1150, [1968] 1 WLR 572. As to the power by rules to delegate the holding and conducting of meetings to the liquidator see the Insolventy Act 1986 s 160(1); and para 588 post. As to the general rules relating to meetings of creditors and contributories see para 650 et seq post.

4 *Re Joint Stock Coal Co* (1869) LR 8 Eq 146; *Re Langham Skating Rink Co* (1877) 5 ChD 669, CA.

5 Insolventy Act 1986 s 195(2).

6 See COMPANIES vol 14 (2009) para 652 et seq. The reference to the Companies Act 1985 is inapplicable in the case of a winding up in relation to a limited liability partnership: see the Insolventy Act 1986 s 195(3); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

7 Insolventy Act 1986 s 195(3).

8 *Re West Hartlepool Ironworks Co* (1875) 10 Ch App 618; *Re Joint Stock Coal Co* (1869) LR 8 Eq 146.

9 *Re Bank of Credit and Commerce International SA (No 3)* [1993] BCLC 1490, sub nom *Re Bank of Credit and Commerce International SA (No 2)* [1992] BCC 715, CA.

10 *Bowes v Directors of Hope Life and Insurance Guarantee Co* (1865) 11 HL Cas 389 at 401; *Re Western of Canada Oil, Lands and Works Co* (1873) LR 17 Eq 1; *Re Demaglass Holdings Ltd* [2001] 2 BCLC 633. See also para 453 ante.

11 *Re Western of Canada Oil, Lands and Works Co* (1873) LR 17 Eq 1; *Re Uruguay Central and Hygueritas Rly Co of Monte Video* (1879) 11 ChD 372; *Re Langley Mill Steel and Iron Works Co* (1871) LR 12 Eq 26; and see para 453 ante.

12 *Re Brighton Hotel Co* (1868) LR 6 Eq 339; *Re Great Western (Forest of Dean) Coal Consumers' Co* (1882) 21 ChD 769; *Re St Thomas' Dock Co* (1876) 2 ChD 116.

13 *Re JD Swain Ltd* [1965] 2 All ER 761, [1965] 1 WLR 909, CA.

14 *Re Vuma Ltd* [1960] 3 All ER 629, [1960] 1 WLR 1283, CA; *Re P and J Macrae Ltd* [1961] 1 All ER 302, [1961] 1 WLR 229, CA; *Re ABC Coupler and Engineering Co Ltd* [1961] 1 All ER 354, [1961] 1 WLR 243.

15 *Re JD Swain Ltd* [1965] 2 All ER 761, [1965] 1 WLR 909, CA. See also *Re Southard & Co Ltd* [1979] 3 All ER 556, [1979] 1 WLR 1198, CA (where a petition brought and supported by creditors belonging to the same group as the insolvent company and comprising a majority of creditors in value was dismissed, less weight being attached to the wishes of non-independent creditors of the company); *Re Medisco Equipment Ltd* [1983] BCLC 305; *Re Lowerstoft Traffic Services Ltd* [1986] BCLC 81; *Re Palmer Marine Surveys Ltd* [1986] 1 WLR 573, [1986] BCLC 106; *Re Falcon RJ Developments Ltd* [1987] BCLC 437, 3 BCC 146; *Re MCH Services Ltd* [1987] BCLC 535, 3 BCC 179; *Re Television Parlour plc* (1988) 4 BCC 95; *Re William Thorpe & Son Ltd* (1988) 5 BCC 156; *Re Magnus Consultants Ltd* [1995] 1 BCLC 203; *Re Gordon & Breach Science Publishers Ltd* [1995] 2 BCLC 189, [1995] BCC 261; *Re Pinstripe Farming Co Ltd* [1996] 2 BCLC 295 (a petition presented by the Secretary of State); *Re Zirceram Ltd (in liquidation)* [2000] 1 BCLC 751 (where the principles applicable are considered); *Re Demaglass Holdings Ltd* [2001] 2 BCLC 633; *Re Lummus Agricultural Services Ltd* [2001] 1 BCLC 137, [1999] BCC 953 (where a winding-up order was made notwithstanding the opposition of three connected creditors and one unconnected creditor of small value). See also *Re Inside Sport Ltd* [2000] 1 BCLC 302, where it was suggested that where the identity of the liquidator is the motive for the presentation of the petition, then such presentation might be inappropriate in light of the court's power to remove a liquidator under the Insolvency Act 1986 s 171 (see para 985 post); but cf *Re Zirceram Ltd (in liquidation)* supra at [26].

Since in a voluntary winding up persons may be ordered to be publicly examined under the Insolvency Act 1986 s 133 (see para 538 post) and s 112 (see para 1012 post), a compulsory order will not be made against the wishes of a majority merely to secure an investigation of the company's affairs: see *Re B Karsberg Ltd* [1955] 3 All ER 854, [1956] 1 WLR 57, CA. Where a voluntary winding up is in progress, supported by a majority of creditors, the court will require good reasons to override their wishes and make a compulsory order: *Re Palmer Marine Surveys Ltd* supra. Where a company goes into members' voluntary liquidation after the petition to wind up is presented, the views of the contributories will also be considered: *Re Surplus Properties (Huddersfield) Ltd* [1984] BCLC 89.

16 *Re Lonsdale Vale Ironstone Co* (1868) 16 WR 601; *Re Home Remedies Ltd* [1943] Ch 1, [1942] 2 All ER 552; *Re Camburn Petroleum Products Ltd* [1979] 3 All ER 297, [1980] 1 WLR 86. As to the position where the company is being wound up voluntarily see para 453 ante.

17 *Re Crigglestone Coal Co Ltd* [1906] 2 Ch 327 at 333, CA; *Re St Thomas' Dock Co* (1876) 2 ChD 116; *Re Chapel House Colliery Co* (1883) 24 ChD 259, CA; cf *Re East Kent Colliery Co Ltd* (1914) 30 TLR 659.

18 *Re Leigh Estates (UK) Ltd* [1994] BCC 292. On administration petitions, the wishes of unsecured creditors are given greater weight by the court than those of secured creditors because they have more to lose: *Re Imperial Motors (UK) Ltd* [1990] BCLC 29, 5 BCC 214; *Re Consumer and Industrial Press Ltd* [1988] BCLC 177, 4 BCC 68; cf *Re Demaglass Holdings Ltd* [2001] 2 BCLC 633; *Re Lummus Agricultural Services Ltd* [2001] 1 BCLC 137, [1999] BCC 953 (court will give little, if any, weight to the views of secured creditors on hearing a winding-up petition, at least in so far as their debts are secured).

19 *Re Leigh Estates (UK) Ltd* [1994] BCC 292; *Re Falcon RJ Developments Ltd* [1987] BCLC 437, 3 BCC 146.

20 *Re London Suburban Bank* (1871) 6 Ch App 641; *Re Sanderson's Patents Association* (1871) LR 12 Eq 188; *Re Kronand Metal Co Ltd* (1899) 43 Sol Jo 368; *Re Middlesborough Assembly Rooms Co* (1880) 14 ChD 104, CA.

21 *Re Langham Skating Rink Co* (1877) 5 ChD 669 at 680-681, CA.

22 *Re City and County Bank* (1875) 10 Ch App 470 at 475 (shareholder's petition ordered to stand over for general meeting to consider the question of a voluntary winding up). See also *Re Rock Investment Trust Ltd* (1891) 35 Sol Jo 447; *Re Petersburg and Viborg Gas Co* [1874] WN 196; *Re Professional, Commercial and Industrial Benefit Building Society* (1871) 6 Ch App 856 at 862; *Re Middlesborough Assembly Rooms Co* (1880) 14 ChD 104, CA.

23 *Re Haven Gold Mining Co* (1882) 20 ChD 151, CA; *Re German Date Coffee Co* (1882) 20 ChD 169, CA; *Re General Phosphate Corpn Ltd* (1893) 37 Sol Jo 683.

24 See para 444 et seq ante.

25 *Re International Contract Co Ltd, ex p Spartali and Tabor* (1866) 14 LT 726; *Re British Oil and Cannel Co* (1867) 15 LT 601. See also *Re Anglo-Continental Produce Co Ltd* [1939] 1 All ER 99.

26 *Re West Surrey Tanning Co* (1866) LR 2 Eq 737; *Re Gold Co* (1879) 11 ChD 701 at 710, CA; *Re Varieties Ltd* [1893] 2 Ch 235. As to the effect of a voluntary winding up on the right of a contributory to a winding-up order see para 455 ante.

27 *Re Oilfields Finance Corp Ltd* (1915) 59 Sol Jo 475, CA.

28 See para 444 ante.

29 *Re Lubin, Rosen and Associates Ltd* [1975] 1 All ER 577, [1975] 1 WLR 122. One reason why an order restraining advertisement may be more readily granted on a petition of the Secretary of State is that, as the Secretary of State represents the public interest, there is less reason than usual to hear the views of supporting or opposing creditors: *Re a Company (No 007923 of 1994)* [1995] 1 WLR 953, [1995] 1 BCLC 440, CA. There is no reason, however, why a contributory, having an interest to oppose a public interest petition, should not be permitted to appear on the petition and file evidence in opposition: *Secretary of State for Trade and Industry v Allso* [2004] EWHC 862 (Ch). As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

480 Wishes of creditors and contributories

TEXT AND NOTE 7--Insolvency Act 1986 s 195(3) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/481. Winding up company without available assets.

481. Winding up company without available assets.

The court must not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets¹.

Although a petition on sufficient grounds will not be dismissed merely because it is motivated by malice², a petition may be dismissed or struck out if the purpose of the petition is not to share in the process of equitable distribution of the company's assets which arises on a winding up, but an ulterior purpose³. Therefore, although a petition cannot be dismissed only on the ground that the company has no assets, the absence of assets may be evidence from which the court can infer that the petitioner has an improper motive.

1 See the Insolvency Act 1986 s 125(1); and para 477 ante. The absence of assets is no grounds for refusing an order: *Re Bartitsu Light Cure Institute Ltd* (1909) Times, 13 January; *Re Clandown Colliery Co Ltd* [1915] 1 Ch 369; *Bell Group Finance (Pty) Ltd (in liquidation) v Bell Group (UK) Holdings Ltd* [1996] 1 BCLC 304, [1996] BCC 505. As to a petition by a contributory in such a case see para 457 ante.

2 *Bryanston Finance Ltd v de Vries (No 2)* [1976] Ch 63, [1976] 1 All ER 25, CA.

3 *Re a Company (No 001573 of 1983)* [1983] BCLC 492, 1 BCC 937; *Re Leigh Estates (UK) Ltd* [1994] BCC 292. See also *Re Falcon RJ Developments Ltd* [1987] BCLC 437, 3 BCC 146 (creditor's reasons for opposing a winding-up petition will be given little weight when they are collateral to his interests as a creditor); *Re Lummus Agricultural Services Ltd* [2001] 1 BCLC 137, [1999] BCC 953.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/482. Costs in general.

482. Costs in general.

The court has a discretion as to costs¹. The company is usually given its costs when a winding-up order is made², and one set of costs is generally given to the petitioner, another among all the creditors supporting him, and a third among the contributories supporting him³. Where the petitioner has been substituted⁴, the costs of the petition may include some of the costs of the original petitioner⁵. When the petition, not being by the company, is dismissed, the petitioner generally has to pay one set of costs to the company, another set among all the creditors opposing, and a third set among all the contributories opposing⁶; but, where the petition is dismissed by consent, the costs are often paid by the company⁷, although sometimes the petitioner is ordered to pay the costs of some or all of the parties supporting and opposing, according to the circumstances⁸. Secured creditors are allowed to share in the set of costs given to creditors⁹. Creditors are not entitled to costs as of right; they must show a reasonable ground for appearing¹⁰. A petition may be dismissed without costs¹¹ and this is now the general rule where a creditor, whether he is a judgment creditor¹² or simple creditor¹³, has acted reasonably in presenting the petition. Costs will generally not be given to a petitioner where the petition is dismissed¹⁴.

Where a petition is brought on the basis of a disputed debt against a solvent company, the court may order costs to be paid by the petitioner to the company on the indemnity basis if the petition is struck out as an abuse of the process of the court¹⁵. This is so even where the court has not seen fit to investigate the solvency of the company¹⁶. A petitioner who has no knowledge of any dispute in relation to the petition debt when initiating proceedings and who agrees to the dismissal of the petition as soon as evidence of the dispute is produced by the company will, save in exceptional circumstances, be liable to pay the company's costs of defending the petition, as he petitions at his own risk¹⁷. However, even where the major part of the debt is disputed, provided that the petition is based on a debt which includes an undisputed amount of at least £750, the petitioner is entitled to costs incurred to the time of payment of the undisputed element¹⁸.

Where the petition contains a personal charge against a director, he is entitled to appear separately and, if free from blame, to be paid a separate set of costs¹⁹.

Calls owing by a petitioning shareholder cannot be set off against the costs of a petition ordered to be paid to him²⁰.

If the amount claimed by a petitioner is paid before the hearing, the company will as a rule be ordered to pay the costs of the petition²¹; but, where a petitioner refuses an offer by the company to pay him the amount claimed, together with his costs, the petitioner may fail to obtain an order for payment of any further costs incurred by him after that date²²; and where he refuses an offer to pay the amount claimed, together with such costs of the petition as the court adjudges, he may be ordered to pay all the costs of the petition subsequently incurred²³.

Where a petition for an administration order has been presented by the company reasonably and in good faith, and is heard on the same date as a creditor's winding-up petition upon which a compulsory order is made without opposition from the company, the court will order the costs of the administration petition to be treated as costs in the winding up²⁴.

As a general rule, no order for costs will be made in favour of one creditor against another creditor because a winding-up petition is not a true *lis* but a class remedy sought in the

interests of creditors as a whole; and creditors may have different views of what constitutes the class interest and are equally entitled to be heard²⁵.

When a petitioner has been paid the petition debt prior to advertisement, then, despite the fact that the petition was properly presented, he cannot obtain an order for costs unless the company agrees to such an order, since the formalities of the winding-up process have not been completed²⁶. If the petitioner wishes to obtain his costs, and the company will not agree to such an order, he must advertise the petition so that it can then be dismissed with the requisite order²⁷.

If there is a dispute between the company and the petitioner as to whether an order for costs should be made, but agreement that the petition should be dismissed, the petition may be dismissed on hearing with the question of costs alone being adjourned for later decision²⁸.

There is jurisdiction in appropriate cases to make orders for costs against non-parties, including directors²⁹. Where directors have procured the company to defend a winding-up petition, notwithstanding that they knew it was insolvent and had been advised that the defence would fail, or defended the petition so as to cause costs to be incurred, a costs order may be made against them³⁰. In the majority of cases, however, the director of a company which defends proceedings brought against it should not be at personal risk as to costs³¹. If a costs order is sought against directors, they should be given the opportunity to appear and file evidence³².

1 See para 1096 et seq post. 'There is only one immutable rule in relation to costs, and that is that there are no immutable rules': *Taylor v Pace Developments Ltd* [1991] BCC 406 at 408, CA, per Lloyd LJ. The court has jurisdiction to make an order against an opposing contributory and creditor: *Re Bathampton Properties Ltd* [1976] 3 All ER 200, [1976] 1 WLR 168. As to the costs on the withdrawal of a petition see para 483 post.

2 See, however, *Re Bathampton Properties Ltd* [1976] 3 All ER 200, [1976] 1 WLR 168 (costs of company in opposing petition down to date on which petition might first have been heard payable out of the assets (see para 810 post); costs thereafter not payable out of assets as opposition unjustified (a 'Bathampton order')). A Bathampton order will, however, only rarely be made since the decision in *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965, [1986] 2 All ER 409, HL, as the court has jurisdiction to make costs orders against a person such as a director who is not a party to the proceedings and the effect of a Bathampton order will be to penalise solicitors in the event that they have not obtained third party funding: *Re a Company (No 004055 of 1991)*, ex p *Doe Sport Ltd* [1991] BCLC 865, sub nom *Re Record Tennis Centres Ltd* [1991] BCC 509; but see *Secretary of State for Trade and Industry v Liquid Acquisitions Ltd* [2002] EWHC 180 (Ch), [2003] 1 BCLC 375 (where a Bathampton order was made). The costs of the company and of its solicitors in defending the petition will normally be implied in the 'usual compulsory order': *Re a Company (No 004055 of 1991)*, ex p *Doe Sport Ltd* supra. The court will therefore usually validate payments made by the company to its solicitors for the purposes of defending a winding-up petition: *Re Crossmore Electrical and Civil Engineering Ltd* [1989] BCLC 137, 5 BCC 37.

3 *Re Criterion Gold Mining Co* (1889) 41 ChD 146; *Re Peckham etc Tramways Co* (1888) 57 LJ Ch 462; *Re Esal (Commodities) Ltd* [1985] BCLC 450. As to what costs are included as contributories' costs see *Re Ibo Investment Trust Ltd* [1904] 1 Ch 26. Separate costs will be refused to creditors or contributories appearing by the solicitor to the petitioner or the company: see *Re Military and General Tailoring Co Ltd* (1877) 47 LJ Ch 141; *Re Brighton Marine Palace and Pier Co Ltd* (1897) 13 TLR 202; and cf note 6 infra. The costs of a provisional liquidator were refused in *Re General International Agency Co Ltd* (1865) 36 Beav 1, where a supervision order was made; but were allowed against the company in *Re Times Life Assurance and Guarantee Co* (1869) LR 9 Eq 382, up to the time when the petition should have been withdrawn. As to the costs of a voluntary liquidator in opposing the petition see *Re William Adler & Co Ltd* [1935] Ch 138, CA; cf para 476 ante. As to the costs of settling the petition (which depend upon what it ought properly to have contained) and of counsel briefed to appear on it (who ought to be ready to meet all opposition) see *Re A and N Thermo Products Ltd* [1963] 3 All ER 721, [1963] 1 WLR 1341. As to the priority of the costs of the petitioner, and anyone appearing on the petition whose costs are allowed, and what their costs comprise for purposes of priority, see para 810 post.

4 See para 479 ante.

5 *Re Bostels Ltd* [1968] Ch 346, [1947] 3 All ER 425, applied in *Re Castle, Coulson and Macdonald Ltd* [1973] Ch 382, [1973] 2 All ER 814; *Re Esal (Commodities) Ltd* [1985] BCLC 450.

6 *Re New Gas Co* (1877) 5 ChD 703, CA; *Re Diamond Fuel Co* [1878] WN 11. Cf *Re Newman and Howard Ltd* [1962] Ch 257, [1941] 2 All ER 495 (petition dismissed, but company whose conduct caused present action ordered to pay costs). As a rule creditors and contributories appearing by the same solicitor are entitled to only

one set of costs, even if represented by separate counsel: *Re Ibo Investment Trust Ltd* [1904] 1 Ch 26; *Re Silberhütte Supply Co Ltd* [1910] WN 81; and cf note 3 supra.

7 *Re Vanguard Motorbus Co Ltd* (1908) 24 TLR 526; *Re Peckham etc Tramways Co* (1888) 57 LJ Ch 462; *Re British Guardian Life Assurance Society* (1876) 24 WR 637.

8 *Re British Electric Street Tramways* [1903] 1 Ch 725, distinguished in *Re RW Sharman Ltd* [1957] 1 All ER 737, [1957] 1 WLR 774 (where the petition of a judgment creditor was dismissed without any order as to costs); *Re Patent Cocoa Fibre Co* (1876) 1 ChD 617 at 618; *Re Criterion Gold Mining Co* (1889) 41 ChD 146; *Re North Brazilian Sugar Factories Ltd* (1886) 56 LT 229; *Re Paper Bottle Co* (1888) 40 ChD 52; *Re Nacupai Gold Mining Co* (1884) 28 ChD 65; *Re District Bank of London* (1887) 35 ChD 576; *Re Jablochkoff Electric Light and Power Co Ltd* (1883) 49 LT 566; *Re Walkham United Mines* [1882] WN 134; and see *Re United Stock Exchange Ltd, ex p Philip and Kidd* (1884) 28 ChD 183 (where the petition had not been advertised). See also note 19 infra.

9 *Re Carmarthenshire Anthracite Coal and Iron Co* (1875) 45 LJ Ch 200 at 201.

10 *Re Hull and County Bank* (1878) 10 ChD 130.

11 *Re Great Northern Copper Mining Co Ltd* (1866) 14 WR 705.

12 *Re RW Sharman Ltd* [1957] 1 All ER 737, [1957] 1 WLR 774; *Re ABC Coupler and Engineering Co Ltd* [1961] 1 All ER 354, [1961] 1 WLR 243; *Re AE Hayter & Sons (Porchester) Ltd* [1961] 2 All ER 676, [1961] 1 WLR 1008 (where the creditor had acted unreasonably). Cf *Re Riviera Pearls Ltd* [1962] 2 All ER 194n, [1962] 1 WLR 722.

13 *Re Sklan Ltd* [1961] 2 All ER 680, [1961] 1 WLR 1013.

14 *Re Tyneside Permanent Benefit Building Society* (1885) 20 LJNC 130; but see *Re Lanaghan Bros Ltd* [1977] 1 All ER 265 (although petition dismissed, costs awarded to petitioner who had proceeded without any fault on his part); *Re Arrow Leeds Ltd* [1986] BCLC 538 (company ordered to pay petitioner's costs on dismissal of petition because proceedings properly constituted and opposition of majority of creditors manifested only at third hearing of petition). Costs may be given to a petitioner where the petition is dismissed due to confusion caused by the company: *Re M McCarthy & Co (Builders) Ltd (No 2)* [1976] 2 All ER 339 (new company incorporated under name of company recently struck off register; petitioner sought to wind up new company on basis of debts incurred by original company; confusion caused by the promoters of the new company; petitioner awarded costs). See also the text and note 26 infra.

15 *Re a Company (No 0012209 of 1991)* [1992] 2 All ER 797, [1992] BCLC 865; *Re a Company (No 2507 of 2003)* [2003] EWHC 1404 (Ch), [2003] 2 BCLC 346. The court may make an order for immediate assessment of costs where, in a clear abuse of process, a director has caused statutory demands to be issued against a company, necessitating the company to apply for an injunction to restrain presentation of a winding-up petition: *Re a Company (No 003689 of 1998)* (1998) Times, 7 October.

16 *Re a Company (No 00751 of 1992), ex p Avocet Aviation Ltd* [1992] BCLC 869.

17 *Re Fernforest Ltd* [1990] BCLC 693, [1991] BCC 680; *Re Cannon Screen Entertainment Ltd* [1989] BCLC 660, sub nom *Cannon Screen Entertainment Ltd v Handmade Films (Distributors) Ltd* (1988) 5 BCC 207; and see *Re a Company (No 007356/98) (ITC Infotech Ltd)* [2000] BCC 214; *Re UK (Aid) Ltd, GlaxoSmithKline Export Ltd v UK (Aid) Ltd* [2003] EWHC 1090 (Ch), [2003] 2 BCLC 351 (where the court refused to order that the costs of the proceedings be reserved to the hearing of an intended summary judgment application in intended claim form proceedings).

18 *Re a Company (No 008122 of 1989), ex p Trans Continental Insurance Services Ltd* [1990] BCLC 697; *Re Pendigo Ltd* [1996] 2 BCLC 64, [1996] BCC 608.

19 *Re Anglo-Greek Steam Co* (1866) LR 2 Eq 1. If he appears by the company's solicitors, a director is not entitled to share in the contributories' set of costs: *Re Ibo Investment Trust Ltd* [1904] 1 Ch 26 at 29. As to costs of copying and procuring evidence see *Re Ibo Investment Trust Ltd* supra. Cf *Re Caston Cushioning Ltd* [1955] 1 All ER 508, [1955] 1 WLR 163 (unfounded allegations against liquidator).

20 *Re General Exchange Bank* (1867) LR 4 Eq 138; *Re Equestrian and Public Building Co* (1888) 1 Meg 115; and see *Re Beer, Brewer and Bowman* (1915) 113 LT 990.

21 *Re Flagstaff Silver Mining Co of Utah* (1875) LR 20 Eq 268 at 269.

22 *Re Times Life Assurance and Guarantee Co* (1869) LR 9 Eq 382; *Re Adjustable Horse Shoe Syndicate Ltd* [1890] WN 157; cf *Re Langley Mill Steel and Iron Works Co* (1871) LR 12 Eq 26 at 29.

23 *Re Imperial Guardian Life Assurance Society* (1869) LR 9 Eq 447.

24 *Re Gosscoff (Groundworks) Ltd* [1988] BCLC 363, 4 BCC 372.

25 *Re Esal (Commodities) Ltd* [1985] BCLC 450.

26 *Re Shusella Ltd* [1983] BCLC 505. See also *Re Nowmost Ltd* [1996] 2 BCLC 492, which contains a detailed account of the practice of the companies court as regards orders for costs where the petition debt is paid by the company, when the costs will ordinarily be ordered to be paid by the company. If the company seeks to discharge the onus of showing why it should not be ordered to pay the costs in such circumstances, it need not put material relied on by it formally in evidence: *Re Nowmost Ltd* supra. Where the petitioner proceeded with a petition notwithstanding that the petition debt had been paid on the basis of, inter alia, the non-payment of the costs of the petition and the non-payment of the unassessed costs of previous litigation, proceeding on the basis of the unpaid petition costs was held not to be abusive, but proceeding on the basis of the unassessed litigation costs, which were not stated in the petition, was abusive: *Re a Company (No 004601 of 1999)* [1998] 2 BCLC 111, ChD. Where a petitioner is entitled to payment of a sum greater than the statutory minimum, then the petitioner is entitled to payment from the debtor not only of the petition debt, but also to all reasonable costs of and in connection with the petition, including of any application to restrain advertisement, and that principle applies where the debtor pays off the petition debt prior to the hearing of the petition: *Re Ryan Developments Ltd* [2002] EWHC 1121 (Ch), [2002] 2 BCLC 792.

27 *Re Shusella Ltd* [1983] BCLC 505 at 507 per Nourse J.

28 *Re Fernforest Ltd* [1990] BCLC 693, [1991] BCC 680.

29 *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965, [1986] 2 All ER 409, HL; *Taylor v Pace Developments Ltd* [1991] BCC 406, CA; *Re a Company (No 004055 of 1991), ex p Doe Sport Ltd* [1991] BCLC 865, sub nom *Re Record Tennis Centres Ltd* [1991] BCC 509; *Re Brackland Magazines Ltd* [1994] 1 BCLC 190, sub nom *Gamlestaden plc v Brackland Magazines Ltd* [1993] BCC 194; *Re Tajik Air Ltd* [1996] 1 BCLC 317, [1996] BCC 368; *Stocznia Gdanska SA v Latreefers Inc (No 2)* [2001] 2 BCLC 116, sub nom *Re Latreefers Inc* [2001] BCC 174, CA. See also *Secretary of State for Trade and Industry v Liquid Acquisitions Ltd* [2002] EWHC 180 (Ch), [2003] 1 BCLC 375; *Re Aurum Marketing Ltd* [2000] 2 BCLC 645, CA (in order to award costs against a director on the petition of the Secretary of State, there need not be evidence of any abuse of process by the director or breach of any fiduciary duty caused by the director causing the company to put forward a defence which he knew to be hopeless: the correct test is whether it is just to make such an order for costs); *Re North West Holdings Plc* [2001] EWCA Civ 61, [2001] 1 BCLC 468 (in the absence of special circumstances on the petition of the Secretary of State, if the directors had a bona fide belief that the company had an arguable defence and that it was in the interests of the company to defend, an order for costs against the directors would constitute an unlawful inroad into the principle of limited liability). As to the circumstances in which a wasted costs order will be made against solicitors conducting the defence of a petition see *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA; *Re Merc Property Ltd* [1999] 2 BCLC 286. Where the petitioning creditor's solicitor has sworn an affidavit in support of a petition, and has no belief in the insolvency of the company nor any grounds upon which he could reach a view that the company was insolvent on the evidence available to him, the solicitor may be held liable to pay the costs of the respondent company: *Re a Company (No 006798 of 1995)* [1996] 2 All ER 417, [1996] 1 WLR 491.

30 *Taylor v Pace Developments Ltd* [1991] BCC 406, CA.

31 *Taylor v Pace Developments Ltd* [1991] BCC 406, CA.

32 *Re Land and Property Trust Co plc (No 4)* [1994] 1 BCLC 232, sub nom *Re Land and Property Trust Co plc (No 2)* [1993] BCC 462, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/483. Costs of two petitions.

483. Costs of two petitions.

Where two petitions are presented for winding up the same company, they have priority according to their dates of presentation¹. The second petitioner is usually allowed his costs up to the time he had notice of the presentation of the first petition²; but, if he proceeds with the second petition, he may be ordered to pay the subsequent costs³ unless he shows that there was some good ground for his doing so. A second petition can seldom be useful, since the court has power to substitute a petitioner⁴. If good ground is shown, and the order is made on the first petition, the second petitioner will be allowed the costs of his petition⁵. If one order is made on both petitions, the carriage of the order, if any, is generally given to the first petitioner⁶.

One of several petitions may be dismissed on its merits, even though an order has been made on another⁷.

1 *Re Building Societies' Trust Ltd* (1890) 44 ChD 140; *Re Standard Portland Cement Co* (1890) 59 LJ Ch 408; *Re Bamford Ltd* [1910] 1 IR 390. As to the procedure where one petition is presented in the High Court and another in the county court see *Re Filby Bros (Provender) Ltd* [1958] 2 All ER 458, [1958] 1 WLR 683; *Re Audio Systems Ltd* [1965] 2 All ER 919, [1965] 1 WLR 1096.

2 *Re General Financial Bank* (1882) 20 ChD 276, CA; *Re GF Brooke & Co* [1888] WN 213; and see *Re Owen's Patent Wheel, Tire and Axle Co Ltd* (1873) 29 LT 672; *Re London and Australian Agency Corp'n* (1873) 29 LT 417; *Re Sheringham Development Co Ltd* (1893) 37 Sol Jo 175.

3 *Re Joint Stock Coal Co* (1869) LR 8 Eq 146 at 154; *Re Accidental and Marine Insurance Co, ex p Rasch* (1866) 36 LJ Ch 75; *Re Empire Assurance Corp'n Ltd* (1867) 16 LT 341; *Re Doré Gallery Ltd* [1891] WN 98; *Re Standard Portland Cement Co* (1890) 59 LJ Ch 408. The order as to costs in *Re Bamford Ltd* [1910] 1 IR 390 is not in accordance with the English practice.

4 See para 479 ante. The following cases were decided before the power to substitute was conferred on the court: *Re Norton Iron Co* (1877) 47 LJ Ch 9; *Re Building Societies' Trust Ltd* (1890) 44 ChD 140; *Re Commercial Bank of South Australia* (1886) 33 ChD 174 at 179.

5 *Re General Financial Bank* (1882) 20 ChD 276, CA; *Re Humber Ironworks Co* (1866) LR 2 Eq 15 (cases where the first petition was collusive); *Re Marron Bank Paper Mill Co Ltd* (1878) 38 LT 140; *Re Scott and Jackson Ltd* (1893) 38 Sol Jo 59 (cases where the first petition had been ordered to stand over); *Re British and Foreign Generating Apparatus Co Ltd* (1865) 12 LT 368 (where the first petition to be presented was the last to be heard).

6 *Re Stortforth Lane Colliery Co* (1879) 10 ChD 487; and see *Re Constantinople and Alexandria Hotels Co Ltd* (1865) 13 WR 851 (paid-up shareholder preferred to shareholder not fully paid). For a case where the second petitioner was given the carriage of the order see *Re General Financial Bank* (1882) 20 ChD 276, CA (where the first petition was collusive); cf *Re United Service Co* (1868) LR 7 Eq 76 (order for winding up under supervision followed by order for compulsory winding up).

7 *Re European Banking Co, ex p Baylis* (1866) LR 2 Eq 521.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/484. Notice of order to official receiver; expenses of voluntary arrangement.

484. Notice of order to official receiver; expenses of voluntary arrangement.

When a winding-up order has been made, the court must forthwith give notice of the fact to the official receiver¹; and thereupon the official receiver takes possession of the company's assets.

Where a winding-up order is made and there is at the time of the presentation of the petition in force for the company a voluntary arrangement², any expenses properly incurred as expenses of the administration of the arrangement in question are a first charge on the company's assets³.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.20(1). For the prescribed form of notice see rr 4.20, 12.7, Sch 4 Form 4.13 (substituted by SI 1987/1919). As to the official receiver see para 503 et seq post.

2 Ie under the Insolventcy Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

3 Insolventcy Rules 1986, SI 1986/1925, r 4.21A (added by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

484 Notice of order to official receiver; expenses of voluntary arrangement

NOTE 1--SI 1986/1925 Sch 4 Form 4.13 substituted: SI 2005/527.

TEXT AND NOTES 2, 3--SI 1986/1925 r 4.21A amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/485. Settling and form of order.

485. Settling and form of order.

The petitioner and every other person who has appeared on the hearing of the petition must, not later than the business day¹ following that on which the order is made, leave at the court all the documents required for enabling the order to be completed forthwith².

It is not necessary for the court to appoint a venue³ for any person to attend to settle the order, unless in any particular case the special circumstances make an appointment necessary⁴. The order must be in the prescribed form⁵.

1 For the meaning of 'business day' see para 113 note 4 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.20(2).

3 For the meaning of 'venue' see para 91 note 7 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.20(3).

5 For the prescribed form of order see *ibid* rr 4.20, 12.7, Sch 4 Form 4.11 (general form), Sch 4 Form 4.12 (substituted by SI 2003/1730) (order for winding up following upon the cessation of the appointment of an administrator). As to the power to appoint as liquidator the supervisor of a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante) or the administrator see para 558 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

485 Settling and form of order

NOTE 5--SI 1986/2925 Sch 4 Forms 4.11, 4.12 substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/486. Transmission and advertisement of order.

486. Transmission and advertisement of order.

When the winding-up order has been made, three copies of it, sealed with the seal of the court¹, must be sent forthwith by the court to the official receiver², who must cause a sealed copy of the order to be served on the company by pre-paid letter addressed to it at its registered office, if any, or, if there is no registered office, at its principal or last known principal place of business; alternatively, the order may be served on such other person or persons, or in such other manner, as the court directs³. The official receiver must forward a copy of the order⁴ to the registrar of companies⁵.

The official receiver must forthwith cause the order to be gazetted⁶, and advertise the order in such newspaper as the official receiver may select⁷. Failure to gazette the notice will have the result that the company will not be entitled to rely against other persons on the order having been made⁸.

1 See para 438 note 1 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.21(1). As to the official receiver see para 503 et seq post.

3 Ibid r 4.21(2).

4 On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who must enter it in his records relating to the company: Insolvency Act 1986 s 130(1). The copy of the order referred to is that which under s 130(1) is directed to be forwarded by the company: Insolvency Rules 1986, SI 1986/1925, r 4.21(3). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

5 Ibid r 4.21(3).

6 Ibid r 4.21(4)(a). The gazetting of the order is also required for the purposes of the Companies Act 1985 s 711(1)(p) (see COMPANIES vol 14 (2009) PARA 144). As to the Gazette, and the gazetting of notices, see para 1048 post.

7 Insolvency Rules 1986, SI 1986/1925, r 4.21(4)(b) (amended by SI 1991/495).

8 See the Companies Act 1985 s 42; and COMPANIES vol 14 (2009) PARA 145.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

486 Transmission and advertisement of order

NOTE 4--The registrar must, on receiving any copy of a winding-up order forwarded under the 1986 Act s 130(1) in relation to a community interest company, provide the

Regulator of Community Interest Companies with a copy of that winding-up order:
Community Interest Company Regulations 2005, SI 2005/1788, reg 35(2).

TEXT AND NOTES 6, 7--SI 1986/1925 r 4.21(4) substituted: SI 2009/642. SI 1986/1925 r
4.21(5) added: SI 2010/686.

NOTE 6--1985 Act s 711(1) replaced with amendments: Companies Act 2006 s
1064(1)-(3) (not yet in force), ss 1077, 1078(2), (3).

TEXT AND NOTE 8--1985 Act s 42 now Companies Act 2006 s 1079.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(ii) Procedure on Petition/C. PROCEDURE COMMON TO ALL PETITIONS/487. Notification of liquidation.

487. Notification of liquidation.

When a company is being wound up¹, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of its property, being a document on or in which the company's name appears, must contain a statement that it is being wound up². If default is made in complying with this requirement the company, and every officer³, liquidator and receiver or manager who knowingly and wilfully authorises or permits the default, is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum⁴.

1 These provisions also apply in a voluntary winding up (see para 939 et seq post): Insolvency Act 1986 s 188(1).

2 Ibid s 188(1).

3 For the meaning of 'officer' see para 690 post.

4 Insolvency Act 1986 ss 188(2), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

487 Notification of liquidation

NOTES 1, 2--1986 Act s 188(1) amended: SI 2008/1897.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/(iii) Effect of Winding-up Order/488. Operation of winding-up order; rescission of order.

(iii) Effect of Winding-up Order

488. Operation of winding-up order; rescission of order.

An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory¹. The court may rescind the order at any time before it has been passed and entered², but only on the application of a creditor, a contributory or the company jointly with a creditor or contributory³. The court has jurisdiction to rescind the winding-up order after it has been entered and passed in appropriate circumstances⁴. Any application for the rescission of a winding-up order must be made within seven days after the date on which the order is made⁵, but the court has jurisdiction to extend the time for making such an application⁶. The court's jurisdiction is not restricted to its statutory jurisdiction⁷ to grant a permanent stay of the winding-up⁸. The application should be made to a judge, district judge or registrar of commensurate jurisdiction with the judicial officer who made the original order⁹, although a registrar hearing the application has jurisdiction to adjourn the matter to the judge¹⁰.

1 Insolvent Act 1986 s 130(4). For the meaning of 'contributory' see para 703 post.

2 *Re Crown Bank* (1890) 44 ChD 634.

3 *Practice Direction--Insolvency Proceedings* para 7.2. The application must be supported by written evidence of assets and liabilities: *Practice Direction--Insolvency Proceedings* para 7.2. In the case of an unsuccessful application, the costs of the petitioning creditor and of the supporting creditors will normally be ordered to be paid by the creditor or the contributory making or joining in the application: *Practice Direction--Insolvency Proceedings* para 7.3. The reason for this is that, if the costs of an unsuccessful application are made payable by the company, they fall unfairly on the general body of creditors: *Practice Direction--Insolvency Proceedings* para 7.3. Cases in which the making of the winding-up order has not been opposed may, if the application is made promptly, be dealt with on a statement by the applicants' legal representative of the circumstances; but, apart from such cases, the court will normally require any application to be supported by written evidence: *Practice Direction--Insolvency Proceedings* para 7.4. There is no need for a formal written application to rescind to be made: *Practice Direction--Insolvency Proceedings* para.7.5.

4 *Re Calmex Ltd, Calmex Ltd v C Lila Ltd* [1989] 1 All ER 485, [1989] BCLC 299 (winding-up order made by mistake). Where the winding-up order has been made by mistake, the court may order that it be removed from the file at Companies House: *Re Calmex Ltd, Calmex Ltd v C Lila Ltd* supra.

5 Insolvent Rules 1986, SI 1986/1925, r 7.47(4); and see para 1030 post.

6 *Re Calmex Ltd, Calmex Ltd v C Lila Ltd* [1989] 1 All ER 485, [1989] BCLC 299. See the Insolvent Rules 1986, SI 1986/1925, r 4.3; and para 1053 post.

7 ie under the Insolvent Act 1986 s 147: see para 902 post.

8 *Re Dollar Land (Feltham) Ltd* [1995] 2 BCLC 370, [1995] BCC 740 (where the company intended to enter into a corporate voluntary arrangement with its creditors under the Insolvent Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante) and where the petition was restored pending the meetings of creditors for that purpose). See also *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145 (jurisdiction to rescind should be exercised with the utmost caution and rarely). In general the court will grant an application to rescind a winding-up order if the petitioner and any supporting creditors are paid prior to the hearing of the application or otherwise consent to the application, if the company adduces evidence that it is solvent, and if an undertaking is given in respect of the costs of the official receiver. The official receiver may be given leave to retain his costs from the statutory deposit: see para 474 ante. Notice of the application should be given to the petitioner, any

supporting creditors, the official receiver and any liquidator who has been appointed. As to the official receiver see para 503 et seq post.

9 *Re SN Group plc* [1994] 1 BCLC 319, [1993] BCC 808 (where the application was made so as to allow the company to enter into administration, which it could not do if it were in liquidation).

10 *Re Dollar Land (Feltham) Ltd* [1995] 2 BCLC 370, [1995] BCC 740. See, however, *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145 (review need not necessarily be by a judge of commensurate jurisdiction).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/ (iii) Effect of Winding-up Order/489. Commencement of winding up by the court.

489. Commencement of winding up by the court.

If, before the presentation of a petition¹ for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up², the winding up is deemed to have commenced at the time of the passing of the resolution³; and, unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken⁴. Where a court makes a winding up order on hearing an administration application⁵, the winding up is deemed to commence on the making of the order⁶. In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up⁷.

The date of commencement of winding up affects many matters. Thus, in the case of a winding up by the court, unless the court otherwise orders, any disposition of the company's property⁸, and any transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, is void⁹. It depends on the date of commencement of winding up whether a person is liable as a present member, or whether a person who has ceased to be a member is liable as a past member, to contribute to the company's assets¹⁰; whether a transaction is a transaction at an undervalue¹¹ or preference¹²; whether certain attachments, sequestrations, distresses or executions are void or in force against the company's assets¹³; whether certain floating charges are invalid¹⁴; whether an execution creditor is entitled to retain the benefit of his execution¹⁵; and at what date the liquidator must send to the registrar of companies his statement as to the proceedings in and position of the liquidation¹⁶. Periods of limitation for the purposes of the Limitation Act 1980 cease to run on the making of a winding-up order, not (except as against the petitioning creditor) when the petition is presented¹⁷.

A claim for rescission of a contract to take shares, on the ground of misrepresentation, commenced after the filing of a petition, is defeated by a compulsory winding-up order made on that petition¹⁸.

1 See para 450 et seq ante.

2 See para 939 et seq post.

3 Insolvency Act 1986 s 129(1). As to when a voluntary winding up commences see para 996 post. In the case of a winding up in relation to a limited liability partnership, it is instead provided that if, before a determination has been made, a resolution has been passed by the partnership for voluntary winding up, the winding up is deemed to have commenced at the time of that determination: see s 129(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 Insolvency Act 1986 s 129(1).

5 *Ie* under *ibid* Sch B1 para 13(1)(e) (as added) (see para 226 ante).

6 *Ibid* s 129(1A) (added by the Enterprise Act s 248(3), Sch 17 paras 9, 16). The addition of this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (Insolvency Act 1986 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3). As to special administration regimes see para 145 ante.

7 Insolvency Act 1986 s 129(2).

8 'Property' includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property: *ibid* s 436.

9 See *ibid* s 127 (as amended); and paras 700-702 post.

10 See *ibid* ss 74, 75; and paras 704-705, 717 post.

11 See *ibid* ss 238, 240 (as amended); and para 843 et seq post.

12 See *ibid* ss 239, 240 (s 240 as amended); and para 846 et seq post.

13 See *ibid* s 128; and para 888 et seq post.

14 See *ibid* s 245 (as amended); and para 861 et seq post.

15 See *ibid* s 183 (as amended); and para 882 et seq post.

16 See *ibid* s 192; and para 602 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

17 *Re Cases of Taffs Well Ltd* [1992] Ch 179, [1991] 3 WLR 731.

18 *Kent v Freehold Land and Brick-Making Co* (1868) 3 Ch App 493.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(3) PETITION/ (iii) Effect of Winding-up Order/490. Effect of winding-up order.

490. Effect of winding-up order.

When a winding-up order has been made, no claim or proceeding may be proceeded with or commenced against the company or its property except by leave of the court and subject to such terms as the court may impose¹.

The winding-up order also has the effect of discharging all the company's employees², of terminating agencies³, and of dismissing its directors⁴. It puts an end to the directors' powers of management⁵; thus they cannot make calls⁶. They may, however, appeal in the company's name from the winding-up order⁷; and they do not cease to be officers of the company for purposes of being ordered to answer requests for information⁸.

The winding-up order does not dissolve the company as a corporation⁹, or vest the company's property in the liquidator unless a vesting order is made¹⁰.

1 Insolvent Act 1986 s 130(2). See further para 893 et seq post. There is a similar provision as regards claims or proceedings against a company not formed but registered under the Companies Act 1985 Pt XXII Ch II (ss 680-690) (as amended) (see COMPANIES vol 14 (2009) PARA 33 et seq), or any contributory of such a company, in respect of any debt of the company: see the Insolvent Act 1986 s 130(3); and para 893 post. In the case of an unregistered company, no claim or proceeding may be commenced or proceeded with against any contributory in respect of any debt of the company except by and subject to the same leave and terms: see s 227; and para 1155 post. As to both the staying and the transferring of claims upon a winding-up order being made see para 887 et seq post.

2 *Re Peek Winch & Tod Ltd* (1979) 130 NLJ 116, CA; and para 752 post. The liquidator may, however, continue to engage employees where he continues the business after a winding up: see *Re English Joint Stock Bank, ex p Harding* (1867) LR 3 Eq 341; cf *MacDowall's Case* (1886) 32 ChD 366. As to proof by employees see further para 769 post.

3 See para 752 post.

4 *Measures Bros Ltd v Measures* [1910] 2 Ch 248, CA. The dismissal discharges a restrictive covenant as to competing in business with the company: *Measures Bros Ltd v Measures* supra. As to a director's claim for his remuneration see COMPANIES vol 14 (2009) PARA 521.

5 *Madrid Bank v Bayley* (1866) LR 2 QB 37 at 40; *Re Farrow's Bank Ltd* [1921] 2 Ch 164 at 174, CA. Thus a court order purporting to confer limited management powers upon the directors made subsequent to the winding-up order must be construed as appointing them special managers (see paras 498-502 post): *Re Mawcon Ltd* [1969] 1 All ER 188, [1969] 1 WLR 78.

6 *Fowler v Broad's Patent Night Light Co* [1893] 1 Ch 724.

7 *Re Diamond Fuel Co* (1879) 13 ChD 400 at 404-405, CA. Security for costs will be ordered where the directors appeal against a winding-up order which was made after a voluntary liquidation for reconstruction purposes had commenced, and the official receiver and the liquidator are made respondents: see *Re Consolidated South Rand Mines Deep Ltd* [1909] WN 66, CA. As to the official receiver see para 503 et seq post.

8 *Madrid Bank v Bayley* (1866) LR 2 QB 37.

9 See para 929 post.

10 See the Insolvent Act 1986 s 145; and paras 575, 674 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/491. Provisional liquidator before winding-up order.

(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER

491. Provisional liquidator before winding-up order.

The court may appoint a provisional liquidator to take possession of and protect the company's assets at any time after the presentation of a winding-up petition¹ and before the making of a winding-up order². The occasion for the appointment is not limited to special circumstances; other factors, such as the public interest, may be taken into account³. Either the official receiver⁴ or any other fit person may be appointed⁵. A person other than the official receiver is occasionally appointed⁶, but the usual rule is to appoint the official receiver⁷. Where a person is appointed provisional liquidator who is other than the official receiver⁸, he must be a person who is qualified to act as an insolvency practitioner in relation to the company⁹.

The provisional liquidator must carry out such functions as the court may confer on him¹⁰. When a provisional liquidator is appointed, his powers may be limited by the order appointing him¹¹. His appointment does not completely oust the power of the board; it may still cause the company to oppose the winding-up petition or to apply to discharge the provisional liquidator¹². Where the appointment of any person to the office of provisional liquidator relates to more than one person or has the effect that the office is held by more than one person, the appointment must declare whether any act required or authorised under any enactment to be done by the provisional liquidator is to be done by all or any one or more of the persons for the time being holding such office¹³.

Where a provisional liquidator has been appointed, no claim or proceeding may be proceeded with or commenced against the company or its property except by leave of the court and subject to such terms as the court may impose¹⁴; and the provisional liquidator must take into his custody or under his control all the property and things in action to which the company is or appears to be entitled¹⁵.

Where the court has appointed a provisional liquidator, the official receiver may require a statement as to the affairs of the company to be made out and submitted to him as in the case of a winding-up order¹⁶. The court may also, as in the case of a company going into liquidation or where an administration order¹⁷ is made or administrative receiver¹⁸ appointed, require any person who has in his possession or control any property, books, papers or records to which the company appears to be entitled forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the provisional liquidator¹⁹ and summon before it any officer of the company or any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company or any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company²⁰. Various persons are also in such cases under a duty to give to the provisional liquidator such information concerning the company and its promotion, formation, business, dealings, affairs or property as the provisional liquidator may reasonably require and to attend on the provisional liquidator at such times as he may reasonably require²¹. A provisional liquidator has the same rights as a liquidator, administrator, administrative receiver or supervisor of a voluntary arrangement²² for ensuring continued supplies of gas, electricity, water and telecommunication services²³. The provisions as to unenforceability of liens on books also apply to a provisional liquidator²⁴.

The acts of an individual as provisional liquidator of a company are valid notwithstanding any defect in his appointment or qualifications²⁵.

In appropriate circumstances, a provisional liquidator may appear on the hearing of the petition²⁶.

1 Insolvency Act 1986 s 135(1). It was held under the analogous provision in the Bankruptcy Act 1883 s 10 (repealed: see now the Insolvency Act 1986 s 286; and *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) para 835) that, when a bankruptcy petition was subsequently dismissed, every act done under the order appointing an interim receiver was valid: *Re AB & Co (No 2)* [1900] 2 QB 429, CA. The appointment of a provisional liquidator is not only provisional but also contingent in the sense that it operates to protect the property for an equal distribution only in the event of an order for compulsory winding up being made, and, if no such order is made, then the appointment ought not to interfere with the rights of third persons: *Re Dry Docks Corp'n of London* (1888) 39 ChD 306 at 314 per Fry LJ. See *Levy v Napier* 1962 SC 468, Ct of Sess (allegation that company's substratum had gone; appointment to preserve assets). The appointment may be made only when an effective petition is pending: *Re a Company* [1974] 1 All ER 256, [1973] 1 WLR 1566.

2 Insolvency Act 1986 s 135(2). A court in the United Kingdom may not in general appoint a provisional liquidator in relation to an EEA insurer (as defined in the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 2(1)) or any branch of it or in relation to an EEA credit institution (as defined in the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 2(1)) or any branch of it: see the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 4(1)(b), (3); and the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 3(1)(b), (3). Those regulations modify the law of insolvency in connection with insurers and credit institutions pursuant to EC Council Directive 01/17 (OJ L110, 20.4.01, p 28) on the reorganisation and winding up of insurance undertakings and EC Council Directive 01/24 (OJ L125, 5.5.01, p 15) on the reorganisation and winding up of credit institutions. For the meaning of 'United Kingdom' see para 12 note 2 ante.

3 *Re Union Accident Insurance Co Ltd* [1972] 1 All ER 1105, [1972] 1 WLR 640; *Re Highfield Commodities Ltd* [1984] 3 All ER 884, [1985] 1 WLR 149 (although the court would be slow to appoint a provisional liquidator unless there is good prima facie evidence that the company would be wound up, the court's power to make such an appointment is not restricted to circumstances where the company is obviously insolvent, or it is otherwise clear that the company would be wound up, or the company's assets are in jeopardy). See also *Securities and Investments Board v Lancashire and Yorkshire Portfolio Management Ltd* [1992] BCLC 281, [1992] BCC 381. The risk of dissipation of assets does not necessarily mean deliberate dissipation but any serious risk that the assets may not continue to be available to the company: *Re a Company (No 003102 of 1991)*, ex p *Nyckeln Finance Co Ltd* [1991] BCLC 539. See also *Re P Turner (Wilsden) Ltd* [1987] BCLC 149, CA (provisional liquidator appointed where a liquidator of two associated companies had a conflict of interest). A provisional liquidator may be appointed in respect of a company even where its only assets are out of the jurisdiction and no jeopardy is shown: *Re a Company (No 00359 of 1987)* [1988] Ch 210, sub nom *International Westminster Bank plc v Okeanos Maritime Corp'n* [1987] 3 All ER 137. The usual purpose underlying the appointment of provisional liquidators is to collect and protect the assets of the company pending the making of a winding-up order, though the jurisdiction is not so confined, and the courts in recent years have been prepared to appoint provisional liquidators more flexibly than in the past: *Re Namco UK Ltd* [2003] 2 BCLC 78; and see *Smith v UIC Insurance Co Ltd* [2001] BCC 11.

4 As to the official receiver see para 503 et seq post. The functions of the official receiver as a provisional liquidator appointed pursuant to the Insolvency Act 1986 s 135 may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 1(b). As to the contracting out of the official receiver's functions generally see paras 505-506 post.

5 Insolvency Act 1986 s 135(2).

6 *Re Unionist Club Ltd* [1891] WN 64; *Re Mercantile Bank of Australia* [1892] 2 Ch 204. As to the notification of his appointment and the giving of security see para 555 et seq post.

7 *Re North Wales Gunpowder Co* [1892] 2 QB 220, CA.

8 See the Insolvency Act 1986 s 230(5); and para 9 ante.

9 Ibid s 230(4). As to insolvency practitioners and their qualification see para 8 et seq ante.

10 Ibid s 135(4). The powers of provisional liquidators may include the power to apply for ancillary relief in foreign jurisdictions: *Re Andrew Weir Insurance Co Ltd* (1993) 6 Ins Int 30.

11 Insolvency Act 1986 s 135(5). As to whether the provisional liquidator may, as a matter of law, exercise the ordinary powers of a liquidator see *Re ABC Coupler and Engineering Co Ltd (No 3)* [1970] 1 All ER 650 at 662, [1970] 1 WLR 702 at 715 per Plowman J.

12 *Re Union Accident Insurance Co Ltd* [1972] 1 All ER 1105, [1972] 1 WLR 640. As to the respective powers of the provisional liquidator and the board see *Re Union Accident Insurance Co Ltd* supra. The appointment of a provisional liquidator automatically revokes the authority of agents appointed to act on behalf of the company by or under the authority of the directors: *Pacific and General Insurance Co Ltd v Hazell* [1997] BCC 400. Where a provisional liquidator has been appointed on unchallenged evidence as to the jeopardy to the assets of a company, it is wrong in principle to treat that appointment as a significant reason for dismissing a person based on a disputed debt and so discharging the provisional liquidator: see *Alipour v Ary* [1997] 1 WLR 534, [1997] 1 BCLC 557, CA.

13 Insolvency Act 1986 s 231(1), (2).

14 See *ibid* s 130(2); and para 893 et seq post. It is not an abuse of process to present a winding-up petition to protect the assets of a company pending a scheme of arrangement: *Re Esal (Commodities) Ltd* [1985] BCLC 450; *Bowkett v Fullers United Electric Works Ltd* [1923] 1 KB 160, CA. Hence, a winding-up petition may be presented, possibly accompanied by the appointment of provisional liquidators, in order to protect the assets of the company pending approval of a scheme of arrangement.

15 Insolvency Act 1986 s 144(1). As to the meaning of 'property' see para 489 note 8 ante.

16 See *ibid* s 131; and para 520 et seq post.

17 As to administration orders see para 145 et seq ante.

18 As to administrative receivers see para 380 et seq ante.

19 See the Insolvency Act 1986 s 234(1)(d), (2); and para 675 post.

20 See *ibid* s 236(1), (2); and para 679 post. The court's powers of enforcement under s 236 to order delivery up of property and payment of a debt due to the company also apply where a provisional liquidator has been appointed: see s 237; and paras 679, 681, 686 post.

21 See *ibid* s 235; and para 678 post.

22 Ie an arrangement under *ibid* Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

23 See *ibid* s 233 (as amended); and para 583 post.

24 See *ibid* s 246 (as amended); and para 676 post.

25 *Ibid* s 232.

26 See eg *Re Bank of Credit and Commerce International SA* [1992] BCLC 570, [1992] BCC 83; *Re Bank of Credit and Commerce International SA (No 2)* [1992] BCLC 579, sub nom *Re Bank of Credit and Commerce International SA* [1992] BCC 83, where the provisional liquidators appeared on the hearing of the petition and made representations.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

491 Provisional liquidator before winding-up order

NOTE 1--The purpose of the appointment is not to realise company assets at the highest value achievable but to preserve assets pending the hearing of the winding-up petition: *Ashborder BV v Green Gas Power Ltd* [2004] EWHC 1517 (Ch), [2005] 1 BCLC 623.

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492. Application for appointment of provisional liquidator.

An application¹ to the court for the appointment of a provisional liquidator may be made by the petitioner, a creditor of the company, a contributory, the company itself, the Secretary of State², a temporary administrator, a member state liquidator³ appointed in main proceedings⁴, or any person who under any enactment would be entitled to present a petition for the winding up of the company⁵.

The application must be supported by an affidavit stating:

- 950 (1) the grounds on which it is proposed that a provisional liquidator should be appointed⁶;
- 951 (2) if some person other than the official receiver is proposed to be appointed, that the person has consented to act and, to the best of the applicant's belief, is qualified to act as an insolvency practitioner⁷ in relation to the company⁸;
- 952 (3) whether or not the official receiver has been informed of the application and, if so, has been furnished with a copy of it⁹;
- 953 (4) whether, to the applicant's knowledge, a voluntary arrangement¹⁰ has been proposed or is in force for the company, or an administrator¹¹ or administrative receiver¹² is acting in relation to the company, or a liquidator has been appointed for its voluntary winding up¹³; and
- 954 (5) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed¹⁴.

The applicant must send copies of the application and of the affidavit in support to the official receiver, who may attend the hearing and may make any representations which he thinks appropriate; and, if for any reason it is not practicable to comply with this provision, the official receiver must be informed of the application in sufficient time for him to be able to attend¹⁵.

The court may on the application, if satisfied that sufficient grounds are shown, make the appointment on such terms as it thinks fit¹⁶. An application may, if necessary, be made in private¹⁷.

Where a provisional liquidator has been appointed, the court must forthwith give notice of the fact to the official receiver¹⁸; and a copy of that notice must at the same time be sent by the court to the provisional liquidator where he is not the official receiver¹⁹.

If a person other than the Financial Services Authority applies to have a provisional liquidator appointed²⁰ in respect of an authorised person²¹ with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the Authority²².

¹ See under the Insolvency Act 1986 s 135: see para 491 ante. The application must be made direct to the Companies Court Judge, not a registrar: see *Practice Direction--Insolvency Proceedings* para 5.1(4).

² As to the Secretary of State see para 11 note 10 ante. Where the Secretary of State has presented a winding-up petition on the grounds of public interest, he may apply for the appointment of a provisional liquidator without offering an undertaking in damages unless the company establishes special circumstances justifying the imposition of such a requirement: *Re Highfield Commodities Ltd* [1984] 3 All ER 884, [1985] 1 WLR 149.

3 For the meaning of 'member state liquidator' see para 460 note 15 ante.

4 For the meaning of 'main proceedings' see para 460 note 16 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.25(1) (substituted by SI 2002/1307). See also EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') arts 2, 3, 38 (temporary administrators); and para 46 et seq ante. This includes the Financial Services Authority presenting a petition under the Financial Services and Markets Act 2000 ss 367, 368: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq. It is wrong for different groups of creditors to apply for their own provisional liquidators to be appointed as provisional liquidators represent the interests of all creditors: *Re Bank of Credit and Commerce International SA (No 2)* [1992] BCLC 579, sub nom *Re Bank of Credit and Commerce International SA* [1992] BCC 83. As to the making of applications see para 1055 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.25(2)(a).

7 As to insolvency practitioners and their qualification see para 8 et seq ante.

8 Insolvency Rules 1986, SI 1986/1925, r 4.25(2)(b). As to the official receiver see para 503 et seq post.

9 Ibid r 4.25(2)(c).

10 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

11 See para 158 et seq ante.

12 See para 380 et seq ante.

13 Insolvency Rules 1986, SI 1986/1925, r 4.25(2)(d).

14 Ibid r 4.25(2)(e).

15 Ibid r 4.25(3).

16 Ibid r 4.25(4); and see *Emmerson's Case* (1866) LR 2 Eq 231 (on appeal 1 Ch App 433); *Re Cilfoden Benefit Society* (1868) 3 Ch App 462; *Re West Worthing Waterworks, Baths and Assembly Rooms Co Ltd* (1868) 18 LT 849; *Re Hammersmith Town Hall Co* (1877) 6 ChD 112; *Re Bound & Co Ltd* (1893) 37 Sol Jo 250 (where the powers were restricted to applying for the appointment of a special manager); *Re Union Accident Insurance Co Ltd* [1972] 1 All ER 1105, [1972] 1 WLR 640 (where the powers were restricted to taking possession of, collecting and protecting the company's assets). In *Re Rockall Fishing, Fish Oil and Fish Manure Co Ltd* (1862) 11 WR 84, on the petition of a creditor having a small share in the company, an application for the appointment of the official receiver as liquidator was granted with liberty to any person interested to apply to have the appointment varied. In *Re Croftheath Ltd* (1975) Times, 18 February, where a representative of the official receiver stated that the expense of his appointment as provisional liquidator would lead to the cessation of business, the court appointed a fit person as provisional liquidator. An undertaking in damages will generally be required if a provisional liquidator is appointed without notice, but not if the appointment is made with notice between the parties: see *Re Highfield Commodities Ltd* [1984] 3 All ER 884, [1985] 1 WLR 149. A provisional liquidator may be appointed notwithstanding the presentation of a petition for an administration order where it is apparent that such petition will not succeed: *Re WF Fearman Ltd* (1988) 4 BCC 139. As an alternative to the appointment of a provisional liquidator, the court may accept undertakings from the directors of the company: *Re Forrester & Lamego Ltd* [1997] 2 BCLC 155.

17 *Re London and Norwich Investment Services Ltd* [1988] BCLC 226.

18 Insolvency Rules 1986, SI 1986/1925, r 4.25A(1) (r 4.25A added by SI 1987/1919). For the prescribed form of notice see the Insolvency Rules 1986, SI 1986/1925, rr 4.25A, 12.7, Sch 4 Form 4.14A (added by SI 1987/1919). As to the court's duty to send a copy of the order to the official receiver see para 494 post; and as to the official receiver acting as liquidator see para 510 et seq post.

19 Insolvency Rules 1986, SI 1986/1925, r 4.25A(2) (as added: see note 18 supra). As to the court's duty to send a copy of the order to the provisional liquidator where he is not the official receiver see para 494 post.

20 Ie under the Insolvency Act 1986 s 135.

21 Ie a person authorised for the purposes of the Financial Services and Markets Act 2000: see s 31; and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 314.

22 Ibid s 369(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

492 Application for appointment of provisional liquidator

TEXT AND NOTES 18, 19--SI 1986/1925 r 4.25A(3) added: SI 2009/642. SI 1986/1925 r 4.25A(4) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/493. Deposit payable by applicant.

493. Deposit payable by applicant.

Before an order appointing the official receiver as provisional liquidator is issued, the applicant for it must deposit with him, or otherwise secure to his satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses¹. If the sum deposited or secured subsequently proves to be insufficient, the court may, on application by the official receiver, order that an additional sum be deposited or secured; and, if the order is not complied with within two days after service of it on the person to whom it is directed, the court may discharge the order appointing the provisional liquidator². If a winding-up order is made after a provisional liquidator has been appointed, any money so deposited must, unless it is required by reason of insufficiency of assets for payment of remuneration and expenses of the provisional liquidator, be repaid to the person depositing it, or as that person may direct, out of the assets, in the prescribed order of priority³.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.27(1). As to the official receiver see para 503 et seq post.

2 Ibid r 4.27(2).

3 Ibid r 4.27(3). As to the general rules regarding priority of the order of payment of costs etc out of the assets see r 4.218 (as amended); and para 810 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

493 Deposit payable by applicant

TEXT AND NOTE 3--SI 1986/1925 r 4.27(3) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/494. Contents of order and notice of appointment.

494. Contents of order and notice of appointment.

The order appointing the provisional liquidator must specify the functions to be carried out by him in relation to the company's affairs¹.

The court must, forthwith after the order is made, send sealed copies of the order as follows:

- 955 (1) if the official receiver is appointed, two copies to him²;
- 956 (2) if a person other than the official receiver is appointed, two copies to that person, and one copy to the official receiver³;
- 957 (3) if there is an administrative receiver acting in relation to the company, one copy to him⁴.

Of the two copies of the order sent to the official receiver, or other person appointed, one copy must in each case be sent by the recipient to the company or, if a liquidator has been appointed for the company's voluntary winding up, to him⁵.

The service of notice on the enforcement officer, before the sale of or completion of the execution on any of the company's goods, that a provisional liquidator has been appointed has the same effect as service of notice of the making of a winding-up order⁶.

1 Insolvent Rules 1986, SI 1986/1925, r 4.26(1). For the prescribed form of order see rr 4.26, 12.7, Sch 4 Form 4.15. Provisional liquidators may themselves apply for an alteration in the powers in the order of appointment: *Re Highfield Commodities Ltd* [1984] 3 All ER 884, [1985] 1 WLR 149. Although no creditors' committee is provided for in respect of a provisional liquidation due to the temporary nature of the process, in the context of provisional liquidations, where the provisional liquidation may be protracted, the order may make provision for the provisional liquidators to establish an informal creditors' committee: *Re Independent Insurance Co Ltd (in provisional liquidation)* [2002] EWHC 1577 (Ch), [2002] 2 BCLC 709.

2 Insolvent Rules 1986, SI 1986/1925, r 4.26(2)(a). As to the official receiver see para 503 et seq post.

3 Ibid r 4.26(2)(b). As to the court's duty to give notice of the appointment to the official receiver and to the provisional liquidator where he is not the official receiver see para 492 ante.

4 Ibid r 4.26(2)(c).

5 Ibid r 4.26(3).

6 See ibid s 184 (as amended); and para 884 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

494 Contents of order and notice of appointment

TEXT AND NOTES 2, 3, 5--In heads (1), (2) for 'two' read 'three': SI 1986/2925 r 4.26(2)(a), (b) (amended by SI 2005/527). The third copy must be sent with SI 1986/2925 Sch 4 Form 4.15A to the registrar of companies: r 4.26(3) (r 4.26(3) substituted, Sch 4 Form 4.15A added by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/495. Security to be provided by an insolvency practitioner appointed as provisional liquidator.

495. Security to be provided by an insolvency practitioner appointed as provisional liquidator.

Where an insolvency practitioner¹ is appointed² to be provisional liquidator, the cost of providing the security required³ must be paid in the first instance by the provisional liquidator; but, if a winding-up order is not made, the person so appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and, if a winding-up order is made, he is entitled to be reimbursed out of the assets in the prescribed order of priority⁴.

If the provisional liquidator fails to give or keep up his security, the court may remove him, and make such order as it thinks fit as to costs⁵. If an order is so made removing the provisional liquidator, or discharging the order appointing him, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place⁶.

1 Ie a person other than the official receiver: see para 491 ante. As to insolvency practitioners and their qualification see para 8 et seq ante. As to the official receiver see para 503 et seq post.

2 Ie under the Insolvency Act 1986 s 135: see para 491 ante.

3 Ie under the Insolvency Act 1986. See further the Insolvency Practitioners Regulations 1990, SI 1990/439, regs 11-14 (as amended); and paras 19-20 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.28(1), (2). As to the general rules regarding priority of the order of payment of costs etc out of the assets see r 4.218 (as amended); and para 810 post.

5 Ibid r 4.29(1).

6 Ibid r 4.29(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

495 Security to be provided by an insolvency practitioner appointed as provisional liquidator

TEXT AND NOTES 1-4--SI 1986/1925 r 4.28(2) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/496. Remuneration of provisional liquidator.

496. Remuneration of provisional liquidator.

The remuneration of the provisional liquidator, other than the official receiver, must be fixed by the court from time to time on his application¹. In fixing his remuneration, the court must take into account:

- 958 (1) the time properly given by him, as provisional liquidator, and his staff in attending to the company's affairs²;
- 959 (2) the complexity, or otherwise, of the case³;
- 960 (3) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree⁴;
- 961 (4) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties⁵; and
- 962 (5) the value and nature of the property with which he has to deal⁶.

In appropriate cases, on an application to fix remuneration, the court may refer the matter to a costs judge for a report⁷. The court also has power to appoint assessors to assist it⁸.

Without prejudice to any order the court may make as to costs, the provisional liquidator's remuneration, whether the official receiver or another, must be paid to him, and the amount of any expenses incurred by him, including the remuneration and expenses of any special manager⁹, reimbursed, if a winding-up order is not made, out of the property of the company¹⁰, and, if a winding-up order is made, out of the assets, in the prescribed order of priority¹¹, or, in either case, out of the deposit paid by the applicant¹² where the relevant funds are insufficient¹³.

The order appointing provisional liquidators may, where the provisional liquidation is likely to be protracted, authorise the provisional liquidators to draw amounts on account of their remuneration in anticipation of fixing by the court, which should generally be limited to two-thirds of the amount estimated by the provisional liquidators¹⁴.

Where a person other than the official receiver has been appointed provisional liquidator, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other statutory duty¹⁵, he must pay the official receiver such sum, if any, as the court may direct¹⁶.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.30(1). As to the official receiver see para 503 et seq post. As to the official receiver's fees etc see para 548 et seq post. A clause in a draft order appointing provisional liquidators whereby the provisional liquidators were to be entitled to draw their remuneration from the unencumbered assets of the company to be calculated on a time cost basis in accordance with their normal hourly rates was deemed inappropriate, on the basis that this should be considered by the court when the company's assets, the time spent and the disbursements were known: *Re Goodwill Merchant Financial Services Ltd* [2001] 1 BCLC 259. See also *Re Independent Insurance Co Ltd (in provisional liquidation)* [2002] EWHC 1577 (Ch) at [4]-[8], [2002] 2 BCLC 709 at [4]-[8] per Ferris J. The incurring and satisfaction of liabilities to third parties (ie disbursements) is a matter for the provisional liquidators themselves, and the court does not fix or approve such disbursements on application under the Insolventcy Rules 1986, SI 1986/1925 (as amended): see r 4.30 (as amended); and the text and notes 2-16 infra.

2 Ibid r 4.30(2)(a).

3 Ibid r 4.30(2)(b).

4 Ibid r 4.30(2)(c).

5 Ibid r 4.30(2)(d).

6 Ibid r 4.30(2)(e).

7 See the *Report of Mr Justice Ferris' Working Party on the Remuneration of Office Holders and certain related matters* (Lord Chancellor's Department, July 1998); *Re Independent Insurance Co Ltd (in provisional liquidation)* [2002] EWHC 1577 (Ch), [2002] 2 BCLC 709; *Re Independent Insurance Co Ltd (in provisional liquidation) (No 2)* [2003] EWHC 51 (Ch), [2003] 1 BCLC 640 (where the court ultimately fixed the remuneration). See further *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 4.2; and note 8 infra.

8 Ie under Supreme Court Act 1981 s 70: see CIVIL PROCEDURE vol 11 (2009) PARA 863. In respect of any application for the fixing and approval of remuneration made by, inter alia, a provisional liquidator after 1 October 2004, *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) will apply. The objective of the practice statement is to ensure that the remuneration of, inter alia, the provisional liquidator which is fixed and approved by the court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken by the provisional liquidator in any given case and is fixed and approved by reference to a process which is consistent and predictable: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 3.2. The practice statement sets out guiding principles, by reference to which such applications are to be considered both by applicants, in the preparation and presentation of their application, and by the court which is required to determine the application: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) paras 3.3-3.4.

Unless otherwise ordered by the court having regard to the particular circumstances of the application, all such applications are to be made in the first instance, where the court is the High Court, to a registrar or district judge in the appropriate district registry of the High Court or, where the court is county court, to a district judge in the appropriate county court: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 4.1. The directions which may be given on the application include, in appropriate cases, a direction that an assessor or costs judge prepare a report to the court in respect of the remuneration or that the registrar or district judge sit with an assessor or costs judge when hearing the application, though in the usual course the registrar or district judge will determine the application without the assistance of an assessor or costs judge: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) paras 4.2-4.3. The costs of any such assessor must be paid from the assets under the control of the provisional liquidator: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 4.6. Detailed guidance is given as to the evidence to be placed before the court on such application: see *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) paras 5.1-5.6. On such an application, the court may make an order permitting payments of remuneration to be made on account, subject to final approval (whether by the court or otherwise): *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 5.7.

Unless otherwise ordered by the court (or as may otherwise be provided for in any enactment or rules of procedure) the costs of and occasioned by an application for the fixing and/or approval of the remuneration of a provisional liquidator are to be paid from the assets under the control of the provisional liquidator: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 5.8.

9 Ie any special manager appointed under the Insolvency Act 1986 s 177: see para 498 et seq post.

10 Insolvency Rules 1986, SI 1986/1925, r 4.30(3)(a) (r 4.30(3) amended, and r 4.30(3A) added, by SI 1987/1919). In such a case, unless the court otherwise directs, the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses: Insolvency Rules 1986, SI 1986/1925, r 4.30(3A) (as so added). See also *Re a Company (No 001951 of 1987)* [1988] BCLC 182, sub nom *Re Walter L Jacob & Co Ltd* (1987) 3 BCC 532 (decided under the rules as originally enacted; prima facie under the rules, the company bore the costs of a provisional liquidator notwithstanding the dismissal of the petition; the court would depart from a directory rule only if there was good cause for doing so). Where a petition is dismissed on the ground that the petitioner has no locus standi, the petitioner may be ordered to pay the costs and expenses of the provisional liquidator: *Graham v John Tullis & Son (Plastics) Ltd* [1991] BCC 398, Ct of Sess.

11 Insolvency Rules 1986, SI 1986/1925, r 4.30(3)(b). As to the general rules regarding priority of the order of payment of costs etc out of the assets see r 4.218 (as amended); and para 810 post.

12 Ie under ibid r 4.27: see para 493 ante.

13 Ibid r 4.30(3). See also *Re UOC Corpn* [1997] 2 BCLC 569.

14 *Re Independent Insurance Co Ltd (in provisional liquidation) (No 2)* [2003] EWHC 51 (Ch), [2003] 1 BCLC 640.

15 le under the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 509 et seq post.

16 Ibid r 4.30(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

496 Remuneration of provisional liquidator

NOTE 2--Where a provisional liquidator engages the services of an independent contractor in relation to the winding up of a company, such a contractor may not be considered as a member of staff or an employee for the purposes of the provisional liquidator's remuneration: *Jacob v UIC Insurance Co Ltd* [2006] EWHC 2717 (Ch), [2007] Bus LR 568.

NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 11--SI 1986/1925 r 4.30(3)(b) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/497. Termination of appointment.

497. Termination of appointment.

The appointment of the provisional liquidator may be terminated by the court on his application, or on that of any of the persons entitled to make an application for the appointment of a provisional liquidator¹. It is inappropriate for the court to appoint provisional liquidators as liquidator of a company, although leave may be given to the liquidator to retain the services of the former provisional liquidators as special managers².

If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks fit with respect to the accounts of his administration or any other matters which it thinks appropriate³.

1 Insolvency Rules 1986, SI 1986/1925, r 4.31(1). The persons referred to are those specified in r 4.25(1) (as substituted) (see para 492 ante).

2 *Re WF Fearman Ltd (No 2)* (1988) 4 BCC 141.

3 Insolvency Rules 1986, SI 1986/1925, r 4.31(2). The court has jurisdiction under r 4.31(2) to order that the expenses of a provisional liquidator, who has been discharged prior to the hearing of the petition, be paid out of the assets of the company without prejudice to the ultimate allocation of responsibility between the parties to the petition and to make an interim order in respect of the assessment of his expenses and remuneration: *Re UOC Corp* [1997] 2 BCLC 569.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

497 Termination of appointment

TEXT AND NOTES--SI 1986/1925 r 4.31(3) added (SI 2009/642), substituted by r 4.31(4), (5) (SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/498. Application for appointment of special manager.

498. Application for appointment of special manager.

Where a company has gone into liquidation¹ or a provisional liquidator has been appointed, the court may appoint any person to be the special manager of the business or property of the company². The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors, contributories³ or members⁴ generally, require the appointment of another person to manage the company's business⁵ or property⁶. Such an application by the liquidator or provisional liquidator must be supported by a report setting out the reasons for the application; and the report must include the applicant's estimate of the value of the assets in respect of which the special manager is to be appointed⁷.

In appointing the official receiver as interim provisional liquidator, the court may also restrict his power to that of applying for the appointment of a special manager⁸.

¹ These provisions apply in a winding up by the court and with certain exceptions and modifications in a voluntary winding up: see para 939 et seq post.

² Insolvency Act 1986 s 177(1). As to the appointment of a special manager of an insurance company's long-term business see the Financial Services and Markets Act 2000 s 376(4)-(7); and FINANCIAL SERVICES AND INSTITUTIONS VOL 48 (2008) PARA 505.

³ For the meaning of 'contributory' see para 703 post.

⁴ As to the meaning of 'member' see para 72 note 9 ante.

⁵ As to the meaning of 'business' see para 156 note 1 ante.

⁶ Insolvency Act 1986 s 177(2). As to the meaning of 'property' see para 489 note 8 ante. Former provisional liquidators may be appointed as special managers: *Re WF Fearman Ltd (No 2)* (1988) 4 BCC 141.

⁷ Insolvency Rules 1986, SI 1986/1925, r 4.206(1). As to the making of applications see para 1055 et seq post. Rules 4.206-4.210 (see para 499 et seq post) apply also with respect to an application by the provisional liquidator, where one has been appointed; and references to the liquidator are to be read accordingly as including the provisional liquidator: r 4.206(2).

⁸ *Re Bound & Co Ltd* (1893) 37 Sol Jo 250. The court may by the winding-up order give the official receiver power to carry on the company's business: *Re General Service Co-operative Stores Ltd* (1891) 64 LT 228. As to the official receiver see para 503 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/499. Powers and remuneration of special manager and contents of order.

499. Powers and remuneration of special manager and contents of order.

The special manager has such powers as may be entrusted to him by the court¹. The court's power to entrust powers to the special manager includes power to direct that any statutory provision² that has effect in relation to the provisional liquidator or liquidator of a company is to have the like effect in relation to the special manager for the purposes of the carrying out by him of the functions of the provisional liquidator or liquidator³.

The court's order appointing the special manager must specify the duration of his appointment, which may be for a period of time, or until the occurrence of a specified event; alternatively, the order may specify that the duration of the appointment is to be subject to a further order of the court⁴.

The appointment of a special manager may be renewed by order of the court⁵; and the special manager's remuneration must be fixed from time to time by the court⁶. The acts of the special manager are valid notwithstanding any defect in his appointment or qualifications⁷.

1 Insolvent Act 1986 s 177(3).

2 le contained in the Insolvent Act 1986.

3 Ibid s 177(4).

4 Insolvent Rules 1986, SI 1986/1925, r 4.206(3). For the prescribed form of order see rr 4.206, 12.7, Sch 4 Form 4.60.

5 Ibid r 4.206(4).

6 Ibid r 4.206(5).

7 Ibid r 4.206(6). The validity of the appointment is not affected by the subsequent dismissal of the petition: see *Re AB & Co (No 2)* [1900] 2 QB 429, CA (a bankruptcy case).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/500. Security to be provided by special manager.

500. Security to be provided by special manager.

The special manager must give the prescribed security¹. The appointment of the special manager does not take effect until the person appointed has given or, being allowed by the court to do so, undertaken to give, security to the person who applies for him to be appointed². It is not necessary that security should be given for each separate company liquidation; but it may be given either specially for a particular liquidation, or generally for any liquidation in relation to which the special manager may be employed as such³. The amount of the security must be not less than the value of the assets in respect of which he is appointed, as estimated by the applicant in his report⁴. When the special manager has given security to the person applying for his appointment, that person must file in court⁵ a certificate as to the adequacy of the security⁶. The cost of providing the security must be paid in the first instance by the special manager; but:

- 963 (1) in a case other than a creditors' voluntary winding up, where a winding-up order is not made, he is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly; and, where a winding-up order is made, he is entitled to be reimbursed out of the assets in the prescribed order of priority⁷;
- 964 (2) in the case of a creditors' voluntary winding up, he is entitled to be reimbursed out of the assets, in the prescribed order of priority⁸.

If the special manager fails to give the required security within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the liquidator⁹ must report the failure to the court, which may thereupon discharge the order appointing the special manager¹⁰.

If the special manager fails to keep up his security, the liquidator must report his failure to the court, which may thereupon remove the special manager, and make such order as it thinks fit as to costs¹¹.

If an order is made removing the special manager, or discharging the order appointing him¹², the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager in his place¹³.

1 Insolvency Act 1986 s 177(5)(a).

2 Insolvency Rules 1986, SI 1986/1925, r 4.207(1).

3 Ibid r 4.207(2).

4 Ibid r 4.207(3). The applicant's report is made under r 4.206(1): see para 498 ante.

5 For the meaning of 'file in court' see para 129 note 3 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 4.207(4).

7 Ibid r 4.207(5). For the general rules as to priority of the order of payment of costs etc out of the assets see r 4.218 (as amended); and para 810 post. As to a creditors' voluntary winding up see para 939 et seq post.

- 8 Ibid r 4.207(6). See also note 7 supra.
- 9 As to the meaning of 'liquidator' see para 498 note 7 ante.
- 10 Insolvency Rules 1986, SI 1986/1925, r 4.208(1).
- 11 Ibid r 4.208(2).
- 12 Ie under ibid r 4.208(1) or r 4.208(2): see the text and notes 9-11 supra.
- 13 Ibid r 4.208(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

500 Security to be provided by special manager

TEXT AND NOTES 7, 8--SI 1986/1925 r 4.207(5), (6) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/501. Accounting by special manager.

501. Accounting by special manager.

The special manager must produce accounts, containing details of his receipts and payments, for the approval of the liquidator¹. The accounts must be in respect of three-month periods for the duration of the special manager's appointment or for a lesser period, if his appointment terminates less than three months from its date, or from the date to which the last accounts were made up². When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator³.

A liquidator may be held to have ratified the unauthorised costs of special managers by including their receipts from the unauthorised transaction in his own accounts without comment⁴.

1 Insolventy Rules 1986, SI 1986/1925, r 4.209(1). As to the meaning of 'liquidator' see para 498 note 7 ante.

2 Ibid r 4.209(2).

3 Ibid r 4.209(3). The special manager must prepare and keep such accounts as may be prescribed; and must produce those accounts in accordance with the Insolventy Rules 1986, SI 1986/1925 (as amended) to the Secretary of State or to such other persons as may be prescribed: Insolventy Act 1986 s 177(5)(b), (c). As to the Secretary of State see para 11 note 10 ante.

4 *Re Mawcon Ltd* [1969] 1 All ER 188, [1969] 1 WLR 78.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(4) PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER/502. Termination of appointment of special manager.

502. Termination of appointment of special manager.

In a case other than a creditors' voluntary winding up¹, the special manager's appointment terminates if the winding-up petition is dismissed or if a provisional liquidator, having been appointed, is discharged without a winding-up order having been made².

In the case of both types of liquidation, if the liquidator³ is of opinion that the employment of the special manager is no longer necessary or profitable for the company, he must apply to the court for directions⁴; and the court may order the special manager's appointment to be terminated⁵.

The liquidator must make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated⁶.

1 See para 939 et seq post.

2 Insolvency Rules 1986, SI 1986/1925, r 4.210(1).

3 As to the meaning of 'liquidator' see para 498 note 7 ante.

4 As to the making of applications see para 1055 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 4.210(2).

6 Ibid r 4.210(3). As to the duty of the liquidator to report a special manager's failure to provide security and the court's powers of removing the special manager see para 500 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(i) Appointment and Status/503. Appointment of official receiver.

(5) OFFICIAL RECEIVER

(i) Appointment and Status

503. Appointment of official receiver.

The official receiver, in relation to any winding up¹, is any person who is authorised² to act as the official receiver in relation to that winding up³. The Secretary of State may, subject to the approval of the Treasury as to numbers, appoint persons to the office of official receiver, and a person appointed to that office⁴ must be paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct⁵, must hold office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct⁶, and may be removed from office by a direction of the Secretary of State⁷. Where a person holds the office of official receiver, the Secretary of State must from time to time attach him either to the High Court or to a county court having jurisdiction for the purposes of the provisions⁸ dealing with the insolvency of individuals and bankruptcy⁹.

Subject to any directions¹⁰ by the Secretary of State, an official receiver attached to a particular court is the person authorised to act as the official receiver in relation to every bankruptcy, winding up or individual voluntary arrangement falling within the jurisdiction of that court¹¹. The Secretary of State must ensure that there is, at all times, at least one official receiver attached to the High Court and at least one attached to each county court having jurisdiction for the purposes of the provisions dealing with the insolvency of individuals and bankruptcy, but he may attach the same official receiver to two or more different courts¹². The Secretary of State may give directions with respect to the disposal of the business of official receivers¹³, and such directions may, in particular, authorise an official receiver attached to one court to act as the official receiver in relation to any case or description of cases falling within the jurisdiction of another court¹⁴, and provide, where there is more than one official receiver authorised to act as the official receiver in relation to cases falling within the jurisdiction of the court, for the distribution of the business between or among themselves¹⁵. Judicial notice must be taken of the appointment of official receivers¹⁶.

1 The official receiver is also empowered to act in respect of bankruptcies and individual voluntary arrangements: see the Insolvency Act 1986 s 399(1), (4) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 31 et seq.

2 Ie by virtue of *ibid* ss 399(2)-(7) (as amended) and s 401: see the text and notes 3-16 *infra*; and para 504 *post*.

3 *Ibid* s 399(1) (amended by the Enterprise Act 2002 s 269, Sch 23 paras 1, 14).

4 Ie whether under the Insolvency Act 1986 s 399 (as amended) or the Bankruptcy Act 1914 s 70 (repealed).

5 Insolvency Act 1986 s 399(2)(a).

6 *Ibid* s 399(2)(b).

7 *Ibid* s 399(2)(c). As to the Secretary of State see para 11 note 10 *ante*. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

8 le the provisions contained in *ibid* Pts VIII-XI (ss 252-385) (as amended): see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) para 81 et seq. As to the courts having jurisdiction see para 438 et seq ante; and *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) paras 6-7.

9 *Ibid* s 99(3). Savings have effect in respect of official receivers attached to a court since before 29 December 1986: see s 399(7).

10 le under *ibid* s 399(6): see the text and notes 13-15 *infra*.

11 *Ibid* s 399(4) (amended by the Enterprise Act 2002 Sch 23 paras 1, 14).

12 Insolvency Act 1986 s 399(5).

13 le including persons appointed to act as the official receiver's deputy: see *ibid* s 401(2); and para 507 post.

14 *Ibid* s 399(6)(a).

15 *Ibid* s 399(6)(b).

16 Insolvency Rules 1986, SI 1986/1925, r 10.1.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in *PARA 2 NOTE 5*.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(i) Appointment and Status/504. Functions and status of official receiver.

504. Functions and status of official receiver.

In addition to any functions conferred on him by the Insolvency Act 1986, a person holding the office of official receiver¹ must carry out such other functions as may from time to time be conferred on him by the Secretary of State². In the exercise of the functions of his office a person holding the office of official receiver must act under the general directions of the Secretary of State and is also an officer of the court³ in relation to which he exercises those functions⁴.

The official receiver may apply to the court for directions in relation to any matter arising in insolvency proceedings⁵.

Any property vested in his official capacity in a person holding the office of official receiver vests, on his dying, ceasing to hold office or being otherwise succeeded in relation to the winding up in question by another official receiver, in his successor without any conveyance, assignment or transfer⁶.

In so far as the official receiver attached to any court does not already have power to do so, he may authorise an officer of his to exercise any function of his which is conferred by or under any enactment⁷. Anything done or omitted to be done by an officer so authorised in, or in connection with, the exercise or purported exercise of the function is to be treated for all purposes as done or omitted to be done by the official receiver in his capacity as such⁷; but this provision does not apply for the purposes of any criminal proceedings brought in respect of anything so done or omitted to be so done⁸.

1 le including persons appointed to act as the official receiver's deputy: see the Insolvency Act 1986 s 401(2); and para 507 post. As to the appointment of the official receiver see para 503 ante.

2 Ibid s 400(1). As to the Secretary of State see para 11 note 10 ante.

3 See *Bottomley v Brougham* [1908] 1 KB 584; *Burr v Smith* [1909] 2 KB 306, CA; *Mond v Hyde* [1999] QB 1097, [1998] 3 All ER 833, CA (a bankruptcy case); and para 566 post. As to the application of the principles in *Re Condon, ex p James* (1874) 9 Ch App 609 to officers of the court see para 571 post. The official receiver is immune from suit in respect of statements made by him in the course of proceedings within the scope of his powers and duties having regard to the extensive enquiries which, as an officer of the court, he is required to make and the need for him to be able to state with the greatest frankness all the matters that he might have ascertained: *Mond v Hyde* supra. Such immunity is not inconsistent with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134 et seq): *Mond v United Kingdom (Application No 49606/99)* [2003] BPIR 1347.

4 Insolvency Act 1986 s 400(2).

5 Insolvency Rules 1986, SI 1986/1925, r 10.3. For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

6 Insolvency Act 1986 s 400(3).

7 Deregulation and Contracting Out Act 1994 s 74(1), (4)(b).

8 Ibid s 74(2).

9 Ibid s 74(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(i) Appointment and Status/505. Power to contract out official receiver's functions.

505. Power to contract out official receiver's functions.

If the Secretary of State by order so provides, any function of the official receiver which is conferred by or under any enactment and which, by virtue of any enactment or rule of law, may be exercised by an officer of his and which is not otherwise excluded¹ may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the official receiver or the Secretary of State². The Secretary of State may not, however, make such an order in relation to the official receiver without first consulting him³.

An order so made may provide that any such function may be exercised, and an authorisation given by virtue of such an order may, subject to the provisions of the order, authorise the exercise of such a function:

- 965 (1) either wholly or to such extent as may be specified in the order or authorisation⁴;
- 966 (2) either generally or in such cases or areas as may be so specified⁵; and
- 967 (3) either unconditionally or subject to the fulfilment of such conditions as may be so specified⁶.

An authorisation given by virtue of such an order:

- 968 (a) must be for such period, not exceeding ten years, as is specified in the authorisation⁷;
- 969 (b) may be revoked at any time by the Secretary of State or the official receiver⁸; and
- 970 (c) must not prevent the Secretary of State or the official receiver or any other person from exercising the function to which the authorisation relates⁹.

Where by virtue of such an order a person is authorised to exercise any function of the Secretary of State or the official receiver, anything done or omitted to be done by or in relation to the authorised person (or an employee of his) in, or in connection with, the exercise or purported exercise of the function is to be treated for all purposes as done or omitted to be done by or in relation to the Secretary of State or the official receiver in his capacity as such¹⁰; but this provision does not apply for the purposes of so much of any contract made between an authorised person and the Secretary of State or the official receiver as relates to the exercise of the function¹¹ or for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or any employee of his)¹².

Where by virtue of such an order a person is authorised to exercise any function of the Secretary of State or the official receiver and the order or authorisation is revoked at a time when a relevant contract¹³ is subsisting, the authorised person is entitled to treat the relevant contract as repudiated by the Secretary of State or the official receiver (and not as frustrated by reason of the revocation)¹⁴.

¹ ie by the Deregulation and Contracting Out Act 1994 s 71 (as amended). A function is excluded from s 69 (see the text and notes 2-9 *infra*) if: (1) its exercise would constitute the exercise of jurisdiction of any court or of any tribunal which exercises the judicial power of the state (s 71(1)(a)); (2) its exercise, or a failure to

exercise it, would necessarily interfere with or otherwise affect the liberty of any individual (s 71(1)(b)); (3) it is a power or right of entry, search or seizure into or of any property (s 71(1)(c)); or (4) it is a power or duty to make subordinate legislation (s 71(1)(d)). Section 71(1)(b), (c) do not exclude any function of the official receiver attached to any court: s 71(2).

2 Ibid ss 69(1), (2). As to the appointment of the official receiver see paras 503-504 ante. As to the Secretary of State see para 11 note 10 ante. In exercise of the powers so conferred the Secretary of State, after consulting all official receivers, has made the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386: see para 506 post.

3 Deregulation and Contracting Out Act 1994 s 69(3).

4 Ibid s 69(4)(a).

5 Ibid s 69(4)(b).

6 Ibid s 69(4)(c).

7 Ibid s 69(5)(a).

8 Ibid s 69(5)(b).

9 Ibid s 69(6)(c).

10 Ibid ss 72(1), (2)(a).

11 Ibid ss 72(3)(a).

12 Ibid ss 72(3)(b).

13 For these purposes, 'relevant contract' means so much of any contract made between the authorised person and the Secretary of State or the official receiver as relates to the exercise of the functions: ibid s 73(3).

14 Ibid s 73(1), (2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(i) Appointment and Status/506. Contracted out functions of official receiver.

506. Contracted out functions of official receiver.

Any function of the official receiver which is conferred by or under the insolvency legislation¹ may be exercised by, or by employees of, such person, if any, as may be authorised in that behalf by the official receiver, except for the following functions²:

- 971 (1) the functions of the official receiver as a receiver appointed by the court³ or a provisional liquidator⁴;
- 972 (2) the receipt of any deposit which relates to a winding-up petition⁵;
- 973 (3) the chairing⁶ of the first meeting of creditors⁷ or the first meeting of contributories⁸ in a winding up by the court⁹;
- 974 (4) the making of an application to the Secretary of State for the appointment¹⁰ of another person as liquidator in the place of the official receiver¹¹;
- 975 (5) the taking of a decision whether or not to refer¹² to the Secretary of State the need for an appointment of a liquidator in any case where at meetings duly held¹³ no person is chosen to be liquidator¹⁴;
- 976 (6) the functions of:
 - 1
 1. (a) a liquidation committee exercisable¹⁵ by the official receiver; or
 2. (b) the official receiver in relation to the hearing of an application to the court¹⁶ for a release or extension of time in respect of the statement of affairs in a winding up by the court¹⁷;
- 2
- 977 (7) the bringing or the conduct of proceedings under the Company Directors Disqualification Act 1986¹⁸;
- 978 (8) the giving of notice to the Secretary of State¹⁹ of the release of the official receiver²⁰;
- 979 (9) consideration as to whether:
 - 3
 3. (a) a request²¹ by creditors for a meeting of creditors or contributories or meetings of both; or
 4. (b) a request²² by contributories for a meeting of contributories;
- 4
- 980 has been properly made in accordance with the Insolvency Act 1986²³;
- 981 (10) the making or conduct of any application to the court to commit for contempt of court a person who has failed to attend²⁴ his public examination²⁵;
- 982 (11) the making of a report to the court pursuant to the provisions relating to:
 - 5
 5. (a) an investigation by the official receiver²⁶; or
 6. (b) a report to the court etc²⁷ on application by officers of the company etc for release from their duty to submit a statement of affairs or for an extension of time²⁸;
- 6
- 983 (12) the making or conduct of an application to the court for a public examination²⁹ and the making or conduct of any application in relation to any public examination³⁰;

- 984 (13) the making or conduct of an application to the court to relieve the official receiver from an obligation to make an application for a public examination duly³¹ requested³²;
- 985 (14) the taking part in a public examination or the questioning³³ of a person³⁴;
- 986 (15) the making or conduct of an application to the court for the issue³⁵ of a warrant for the arrest of a person and for the seizure of any books, papers, records, money or goods in that person's possession³⁶;
- 987 (16) the making or conduct of an application to the court³⁷ for the arrest of a contributory and for the seizure of his books, papers and movable personal property³⁸;
- 988 (17) the making or conduct of an application to the court for the transfer of winding-up proceedings from one court to another³⁹;
- 989 (18) the taking⁴⁰ of affidavits and declarations⁴¹;
- 990 (19) any function of the official receiver in relation to the hearing of an application by a director in respect of whom a disqualification order made under the Company Directors Disqualification Act 1986 is in force, for leave to be a director of a company, to be liquidator or administrator of a company, to be a receiver or manager of a company's property or to be concerned or to take part in the promotion, formation or management of a company in any way, whether directly or indirectly⁴²;
- 991 (20) the making of a report to the Secretary of State⁴³ pursuant to the Company Directors Disqualification Act 1986⁴⁴;
- 992 (21) any function corresponding to one referred to in heads (1) to (20) above which is exercisable by the official receiver by virtue of an application, with or without modifications, of any provision of the insolvency legislation to insolvent partnerships or unregistered companies⁴⁵;
- 993 (22) the presentation by the official receiver of a winding-up petition⁴⁶ in respect of a company being wound up voluntarily⁴⁷.

A function which may be so contracted out, and which involves the exercise of a right of audience⁴⁸ in relation to any proceedings before a court, may only be exercised subject to the condition that such right of audience may not be exercised by any person other than a person who has a right of audience in relation to the proceedings in question by virtue of the relevant provisions of the Courts and Legal Services Act 1990⁴⁹.

1 For these purposes, 'the insolvency legislation' means the Insolvency Act 1986, the Companies Act 1985, the Company Directors Disqualification Act 1986, any subordinate legislation made under any of those Acts and any regulations made under the Insolvency Rules 1986, SI 1986/1925, r 12.1 (see para 551 post): Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 2(1). As to the appointment of the official receiver see para 503 ante.

2 Ibid art 3(1). As to the contracting out of the official receiver's functions in relation to bankruptcy proceedings see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 33-34.

3 Ie pursuant to the Insolvency Act 1986 s 32: see COMPANIES vol 15 (2009) PARA 1365.

4 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 1(a), (b). The appointment of a provisional liquidator is made pursuant to the Insolvency Act 1986 s 135 (see para 491 ante): Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 1(b).

5 Ibid Schedule para 2. As to the deposit payable on the presentation of a winding-up petition see para 474 ante.

6 Ie by virtue of the Insolvency Rules 1986, SI 1986/1925, r 4.55: see para 654 post.

7 For these purposes, 'the first meeting of creditors' has the meaning given by ibid r 4.50(7) (see para 532 post): Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 3(a).

8 For these purposes, 'the first meeting of contributories' has the meaning given by the Insolvency Rules 1986, SI 1986/1925, r 4.50(7) (see para 532 post): Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 3(a).

9 Ibid Schedule para 3(a).

10 Ie under the Insolvency Act 1986 s 137(1): see para 510 post.

11 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 4(a). As to the Secretary of State see para 11 note 10 ante.

12 Ie pursuant to the Insolvency Act 1986 s 137(2): see para 535 post.

13 Ie held in pursuance of a decision under ibid s 136(5)(a): see para 532 post.

14 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 5(a).

15 Ie the functions exercisable under the Insolvency Rules 1986, SI 1986/1925, r 4.172(2): see para 645 post.

16 Ie under ibid r 4.36(2): see para 522 post.

17 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 8(a), (b)(ii).

18 Ibid Schedule para 9. As to the Company Directors Disqualification Act 1986 see para 1107 et seq post.

19 Ie pursuant to the Insolvency Act 1986 s 174(3): see para 624 post.

20 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 10.

21 Ie pursuant to the Insolvency Rules 1986, SI 1986/1925, r 4.57(2): see para 652 post.

22 Ie pursuant to ibid r 4.57(2) as it applies by virtue of r 4.57(4): see para 652 post.

23 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 11(a), (b).

24 Ie under the Insolvency Act 1986 s 133: see paras 538-539 post.

25 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 13(a).

26 Ie pursuant to the Insolvency Act 1986 s 132(1): see para 513 post.

27 Ie pursuant to the Insolvency Rules 1986, SI 1986/1925, r 4.36(5): see para 522 post.

28 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 14(a), (d).

29 Ie under the Insolvency Act 1986 s 133(1): see para 538 post.

30 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 15.

31 Ie pursuant to the Insolvency Act 1986 s 133(2): see para 539 post.

32 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 16.

33 Ie pursuant to the Insolvency Act 1986 s 133(4)(a): see para 542 post.

34 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 17.

35 Ie pursuant to the Insolvency Act 1986 s 134(2): see para 543 post.

36 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 18(a).

37 Ie pursuant to the Insolvency Act 1986 s 158: see para 743 post.

38 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 19.

39 Ibid Schedule para 20. As to the transfer of winding-up proceedings see para 899 et seq post.

- 40 le pursuant to the Insolvency Rules 1986, SI 1986/1925, r 7.57(5): see para 1076 post.
- 41 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 21.
- 42 Ibid Schedule para 22(b). As to applications for leave under a disqualification order see para 1139 post.
- 43 le pursuant to the Company Directors Disqualification Act 1986 s 7(3): see para 1125 post.
- 44 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 23.
- 45 Ibid Schedule para 24. As to insolvent partnerships see para 1166 et seq post; and as to unregistered companies see para 1147 et seq post.
- 46 le pursuant to the Insolvency Act 1986 s 124(5): see para 458 ante.
- 47 Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 25.
- 48 le a right of audience within the meaning of the Courts and Legal Services Act 1990 s 119(1) (see *LEGAL PROFESSIONS* vol 65 (2008) PARA 495): Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 2(1).
- 49 Ibid art 3(2), (3). The relevant provisions of the Courts and Legal Services Act 1990 are Pt II (ss 17-70) (as amended) (see *LEGAL PROFESSIONS* vol 65 (2008) PARA 495 et seq): Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(i) Appointment and Status/507. Deputy official receiver and staff.

507. Deputy official receiver and staff.

The Secretary of State may, if he thinks it expedient to do so in order to facilitate the disposal of the business of the official receiver attached to any court, appoint an officer in his department to act as deputy to that official receiver¹. Subject to any directions given by the Secretary of State², a person appointed to act as deputy to an official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as the official receiver to whom he is appointed deputy³. An appointment of a person to act as deputy official receiver⁴ may be terminated at any time by the Secretary of State⁵. Judicial notice must be taken of the appointment of deputy official receivers⁶. The Secretary of State may, subject to the approval of the Treasury as to numbers and remuneration and as to the other terms and conditions of the appointments, appoint officers of his department to assist official receivers in the carrying out of their functions⁷.

1 Insolvency Act 1986 s 401(1). See also *Mond v Hyde* [1999] QB 1097, [1998] 2 BCLC 340 (a bankruptcy case). As to the appointment of the official receiver see para 503 ante. As to the Secretary of State see para 11 note 10 ante.

2 *Ie* under *ibid* ss 399, 400 (s 399 as amended): see paras 503-504 ante.

3 *Ibid* s 401(2).

4 *Ie* under *ibid* s 401(1).

5 *Ibid* s 401(3).

6 Insolvency Rules 1986, SI 1986/1925, r 10.1.

7 Insolvency Act 1986 s 401(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(i) Appointment and Status/508. Persons entitled to act on official receiver's behalf.

508. Persons entitled to act on official receiver's behalf.

In the absence of the official receiver authorised to act in a particular case, an officer authorised in writing for the purpose by the Secretary of State, or by the official receiver himself, may, with the leave of the court, act on the official receiver's behalf and in his place in any public¹ or private² examination, and in respect of any application to the court³. In case of emergency, where there is no official receiver capable of acting, anything to be done by, to or before the official receiver may be done by, to or before the registrar of the court⁴.

1 Ie under the Insolvency Act 1986 s 133: see para 538 post.

2 Ie under ibid s 236: see para 679 post.

3 Insolvency Rules 1986, SI 1986/1925, r 10.2(1). As to the appointment of the official receiver see para 503 ante. As to the Secretary of State see para 11 note 10 ante.

4 Ibid r 10.2(2). For the meaning of 'registrar' see para 1055 note 3 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

508 Persons entitled to act on official receiver's behalf

NOTE 3--SI 1986/1925 r 10.2(1) amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/509. Receiver in debenture holders' claim.

(ii) Duties and Powers in general

509. Receiver in debenture holders' claim.

The official receiver's services may be required in proceedings outside a winding up. Thus where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed¹.

¹ See the Insolvency Act 1986 s 32; and COMPANIES vol 15 (2009) PARA 1365.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/510. Official receiver as liquidator.

510. Official receiver as liquidator.

Subject to certain exceptions¹, on the making of a winding-up order by the court in England and Wales, the official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator². Upon becoming liquidator, the official receiver is under a duty to take the company's property into his custody or under his control³ and has all the powers of a liquidator⁴. The official receiver does not become liquidator where a winding-up order is made:

- 994 (1) immediately upon the appointment of an administrator ceasing to have effect⁵ and the court exercises its power to appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect⁶; or
- 995 (2) at a time when there is a supervisor of a voluntary arrangement approved in relation to the company⁷ and the court exercises its power to appoint as liquidator of the company the person who was the supervisor at the time when the winding-up order was made⁸.

The official receiver is, by virtue of his office, the liquidator during any vacancy⁹.

In a winding up by the court in England and Wales, the official receiver may, at any time when he is the liquidator of the company, apply to the Secretary of State for the appointment of a person as liquidator in his place¹⁰. On such an application, the Secretary of State must either make an appointment or decline to make one¹¹.

1 See the text and notes 5-8 infra.

2 Insolvency Act 1986 s 136(1), (2). As to the provisions by which another person may become liquidator see s 137 (see the text and notes 10-11 infra; and para 535 post) and s 139 (see para 534 post). Where another person becomes liquidator, the official receiver is under a duty to hand over the assets to him: see para 537 post.

3 See para 573 post.

4 See para 577 et seq post.

5 As to administration orders see para 145 et seq ante.

6 See the Insolvency Act 1986 s 140(1) (as substituted); and para 558 post.

7 Ie under ibid Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

8 See ibid s 140(2), (3); and para 558 post.

9 Ibid s 136(3). As to the notice to be given to the official receiver by a liquidator who intends to vacate office in a winding up by the court see para 621 post.

10 Ibid s 137(1). As to the Secretary of State see para 11 note 10 ante. The making of an application to the Secretary of State for the appointment of another person as liquidator in the place of the official receiver under s 137(1) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 4(a). As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

11 Insolvency Act 1986 s 137(3). As to the duties of a liquidator so appointed and the procedure following such appointment see para 559 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/511. Style of official receiver as liquidator.

511. Style of official receiver as liquidator.

Where the official receiver is liquidator, he must be described by the style of 'the official receiver and liquidator' of the company in respect of which he is appointed and not by his individual name¹.

¹ Insolvency Act 1986 s 163(b).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/512. Duties where person other than official receiver appointed liquidator.

512. Duties where person other than official receiver appointed liquidator.

In a winding up by the court the official receiver has certain duties to perform where a person other than himself is appointed liquidator of a company by the creditors or contributories or by the Secretary of State in connection with the appointment and associated formalities¹.

¹ See paras 557, 559 post. As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/513. Investigation by official receiver.

513. Investigation by official receiver.

Where a winding-up order is made by the court in England and Wales, it is the duty of the official receiver to investigate, if the company has failed, the causes of failure¹, and, generally, the promotion, formation, business², dealings and affairs of the company³, and to make such report, if any, to the court as he thinks fit². The report is, in any proceedings, prima facie evidence of the facts stated in it⁵.

1 Insolventy Act 1986 s 132(1)(a).

2 As to the meaning of 'business' see para 156 note 1 ante.

3 Insolventy Act 1986 s 132(1)(b).

4 Ibid s 132(1). The making of a report to the court by the official receiver pursuant to s 132(1) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 14(a). As to the contracting out of the official receiver's functions generally see paras 505-506 ante. As to the powers given to the official receiver to obtain information see para 519 et seq post.

5 Insolventy Act 1986 s 132(2). The report will be absolutely privileged as regards libel proceedings by persons named in it: *Bottomley v Brougham* [1908] 1 KB 584; *Burr v Smith* [1909] 2 KB 306. See also *Public Examination* [1894] WN 44; *Re John Tweddle & Co Ltd* [1910] 2 KB 697, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/514. Duty of persons to co-operate with official receiver.

514. Duty of persons to co-operate with official receiver.

Where a winding-up order has been made against a company, whether or not the official receiver is the liquidator, various persons are under a duty to give the official receiver such information concerning the company and its promotion, formation, business, dealings, affairs or property as the official receiver may at any time reasonably require and to attend on the official receiver at such times as the latter may reasonably require¹.

¹ See the Insolvency Act 1986 s 235 (as amended); and paras 524, 678 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/515. Official receiver's powers to inquire into company's affairs.

515. Official receiver's powers to inquire into company's affairs.

Where a winding-up order has been made against a company, whether or not the official receiver is liquidator, the official receiver is among the persons who have power to apply for various persons to be summoned to appear before the court or to produce books, papers or other records in their possession relating to the company or its promotion, formation, business, dealings, affairs or property¹.

¹ See the Insolvency Act 1986 s 236; and para 679 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/516. Duties of official receiver relating to disqualification of unfit directors of insolvent companies.

516. Duties of official receiver relating to disqualification of unfit directors of insolvent companies.

Where a company is being wound up by the court, the official receiver, whether or not he is the liquidator, is among the persons under a duty to report to the Secretary of State¹ if it appears to him that a past or present director of an insolvent company is unfit to be concerned in the management of a company. The official receiver, whether or not he is liquidator, also has power to apply for disqualification orders if the Secretary of State so directs, in the case of a person who is or has been a director of a company which is being wound up by the court, and for this purpose to call for information from past or present office holders².

1 As to the Secretary of State see para 11 note 10 ante.

2 See the Company Directors Disqualification Act 1986 ss 6, 7 (as amended); and para 1121 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/517. Exercise of functions of liquidation committee.

517. Exercise of functions of liquidation committee.

Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested, except to the extent that the Insolvency Rules 1986¹ otherwise provide, in the Secretary of State², in which event they may be exercised by the official receiver³.

The liquidation committee is not able, or required, to carry out its functions at any time when the official receiver is liquidator, but at any such time its functions are vested in the Secretary of State except to the extent that the rules otherwise provide⁴.

1 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 Insolvency Act 1986 s 141(5). As to the liquidation committee see para 629 et seq post. As to the Secretary of State see para 11 note 10 ante.

3 See the Insolvency Rules 1986, SI 1986/1925, r 4.172(1), (2); and para 645 post.

4 See the Insolvency Act 1986 s 141(4); and paras 629, 645 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (ii) Duties and Powers in general/518. Power to apply for early dissolution.

518. Power to apply for early dissolution.

Where the official receiver is liquidator of a company, he may apply to the registrar of companies for the early dissolution of the company¹.

¹ See para 929 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/519. Official receiver's duties as to statement of affairs.

(iii) Statement of Affairs and Accounts

519. Official receiver's duties as to statement of affairs.

When, as liquidator, the official receiver has begun to collect the assets of the company¹ by taking possession, and, as official receiver, has performed his duties with reference to the winding-up order and its advertisement², his next duties as official receiver are with reference to the statement of affairs and accounts³, the sending of a report to creditors and contributories and to the court⁴, and the summoning of the first meetings of creditors and contributories⁵.

1 See paras 510 ante, 574 post.

2 See para 486 ante.

3 See para 520 et seq post.

4 See para 527 et seq post.

5 See para 532 et seq post.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/520. Submission, verification and filing of statement of affairs.

520. Submission, verification and filing of statement of affairs.

Where the court has made a winding-up order¹ or appointed a provisional liquidator², the official receiver may require some or all of certain persons³ to make out and submit to him a statement in the prescribed form⁴ as to the affairs of the company⁵.

Where the official receiver determines to require a statement of the company's affairs to be made out and submitted to him⁶, he must send notice to each of the persons ('the deponents') whom he considers should be made responsible for making out and submitting the statement⁷, requiring them to prepare and submit the statement⁸. The notice must inform each of the deponents of the names and addresses of all others, if any, to whom the same notice has been sent⁹, of the time within which the statement must be delivered¹⁰, of the penalty for non-compliance¹¹, and of the application to him, and to each of the other deponents, of the duty¹² to provide information, and to attend on the official receiver if required¹³. The official receiver must, on request, furnish a deponent with instructions for the preparation of the statement and with the forms¹⁴ required for that purpose¹⁵.

The statement must be verified by affidavit¹⁶ by the persons required to submit it and must show:

- 996 (1) particulars of the company's assets, debts and liabilities¹⁷;
- 997 (2) the names and addresses of the company's creditors¹⁸;
- 998 (3) the securities held by them respectively¹⁹;
- 999 (4) the dates when the securities were respectively given²⁰; and
- 1000 (5) such further or other information as may be prescribed or as the official receiver may require²¹.

The statement of affairs must be in the prescribed form²² and must contain all the particulars required by that form and be verified by affidavit by the deponents, using the same form²³. The official receiver may require any of the specified persons to submit an affidavit of concurrence, stating that he concurs in the statement of affairs²⁴. Such an affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring in the statement²⁵. The statement of affairs must be delivered to the official receiver by the deponent making the affidavit of verification (or by one of them, if more than one), together with a copy of the verified statement²⁶. Every affidavit of concurrence must be delivered to the official receiver by the person who makes it, together with a copy²⁷. The official receiver must file the verified copy of the statement and affidavits of concurrence, if any, in court²⁸. The affidavit may be sworn before an official receiver or a deputy official receiver, or before an officer of the Department of Trade and Industry or the court duly authorised in that behalf²⁹.

Where the official receiver thinks that it would prejudice the conduct of the liquidation for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it³⁰. The court may on the application order that the statement or, as the case may be, the specified part of it be not filed, or that it is to be filed separately and not be open to inspection otherwise than with leave of the court³¹.

- 1 See para 488 et seq ante.
- 2 See para 491 et seq ante.
- 3 Ie those specified in the Insolvency Act 1986 s 131(3): see para 521 post.
- 4 For the prescribed form of statement see the Insolvency Rules 1986, SI 1986/1925, rr 4.33, 12.7, Sch 4 Form 4.17.
- 5 Insolvency Act 1986 s 131(1).
- 6 Ie in accordance with *ibid* s 131.
- 7 Ie under *ibid* s 131.
- 8 Insolvency Rules 1986, SI 1986/1925, r 4.32(1)-(3). For the prescribed form of notice see r 12.7, Sch 4 Form 4.16 (substituted by SI 1987/1919). 'Deponent' means the persons to whom notice is sent under the Insolvency Rules 1986, SI 1986/1925, r 4.32(2): r 4.32(3).
- 9 *Ibid* r 4.32(4)(a).
- 10 *Ibid* r 4.32(4)(b). See para 522 post.
- 11 *Ibid* r 4.32(4)(c). 'The penalty for non-compliance' is a reference to the effect of the Insolvency Act 1986 s 131(7): see para 526 post.
- 12 Ie under the Insolvency Act 1986 s 235 (as amended): see para 678 post.
- 13 Insolvency Rules 1986, SI 1986/1925, r 4.32(4)(d).
- 14 See note 4 *supra*. See also the text and notes 22, 23 *infra*.
- 15 Insolvency Rules 1986, SI 1986/1925, r 4.32(5).
- 16 The affidavit is incorporated in the prescribed form of statement: see the text and note 23 *infra*.
- 17 Insolvency Act 1986 s 131(2)(a).
- 18 *Ibid* s 131(2)(b).
- 19 *Ibid* s 131(2)(c).
- 20 *Ibid* s 131(2)(d).
- 21 *Ibid* s 131(2)(e).
- 22 For the prescribed form of statement of affairs see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 4.17.
- 23 *Ibid* r 4.33(1).
- 24 *Ibid* r 4.33(2).
- 25 *Ibid* r 4.33(3).
- 26 *Ibid* r 4.33(4).
- 27 *Ibid* r 4.33(5).
- 28 *Ibid* r 4.33(6). For the meaning of 'file in court' see para 129 note 3 ante.
- 29 *Ibid* rr 4.33(7), 13.1, 13.13(2). As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 1 et seq.
- 30 *Ibid* r 4.35(1). As to the making of applications see para 1055 et seq post.

31 Ibid r 4.35(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

520 Submission, verification and filing of statement of affairs

NOTES 4, 22--SI 1986/2925 Sch 4 Form 4.17 substituted: SI 2005/527.

TEXT AND NOTES 23-29--SI 1986/1925 r 4.33 amended: SI 2010/686.

TEXT AND NOTE 29--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1986/1925 r 13.13(2) (amended by SI 2007/3224). SI 1986/1925 r 13.13(2A) added: SI 2010/686.

NOTE 31--SI 1986/1925 r 4.35(3), (4) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/521. Who must submit and verify statement of affairs.

521. Who must submit and verify statement of affairs.

The persons whom the official receiver may require to make out and submit to him a statement of affairs¹ are:

- 1001 (1) those who are or have been officers² of the company³;
- 1002 (2) those who have taken part in the formation of the company at any time within one year before the relevant date⁴;
- 1003 (3) those who are in the company's employment⁵, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required⁶; or
- 1004 (4) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company⁷.

Even if a person's appointment as director⁸ has ceased, but he has been de facto acting as a director within the prescribed period of a year, he is within this provision⁹.

1 See para 520 ante.

2 For the meaning of 'officer' see para 690 post.

3 Insolvency Act 1986 s 131(3)(a).

4 Ibid s 131(3)(b). For these purposes, 'the relevant date' means: (1) in a case where a provisional liquidator is appointed, the date of his appointment; and (2) in a case where no such appointment is made, the date of the winding-up order: s 131(6).

5 For these purposes, 'employment' includes employment under a contract for services: *ibid* s 131(6).

6 Ibid s 131(3)(c).

7 Ibid s 131(3)(d).

8 As to the meaning of 'director' see para 5 note 2 ante.

9 *Re New Par Consols Ltd* [1898] 1 QB 573, DC.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/522. Time for submitting or dispensing with statement of affairs.

522. Time for submitting or dispensing with statement of affairs.

Where any persons are required to submit a statement of affairs to the official receiver, they must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice¹ of the requirement is given to them by the official receiver²; but the official receiver, if he thinks fit, may at any time release a person from an obligation imposed upon him to make out and submit a statement of affairs³ or, either when giving the notice or subsequently, extend the period for delivering the statement of affairs⁴; and, where the official receiver has refused to exercise this power, the court, if it thinks fit, may exercise it⁵.

The power of the official receiver to give such a release, or to grant such an extension of time, may be exercised at the official receiver's own discretion, or at the request of any deponent⁶. A deponent may, if he requests a release or extension of time and it is refused by the official receiver, apply to the court for it⁷. The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it must not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice; and, if the application is not so dismissed, the court must fix a venue⁸ for it to be heard, and give notice⁹ to the deponent accordingly¹⁰. The deponent must, at least 14 days before that hearing, send to the official receiver a notice stating the venue, accompanied by a copy of the application, and of any evidence which he, the deponent, intends to adduce in support of it¹¹. The official receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention; and, if such a report is filed, a copy of it must be sent by the official receiver to the deponent, not later than five days before the hearing¹². Sealed copies of any order made on the application must be sent by the court to the deponent and the official receiver¹³. On any such application, the applicant's costs must be paid in any event by him and, unless the court otherwise orders, no allowance towards them should be made out of the assets¹⁴.

1 See para 520 ante.

2 Insolvency Act 1986 s 131(4).

3 *Ie* under *ibid* s 131(1), (2): see para 520 ante.

4 *Ie* the period of 21 days mentioned in *ibid* s 131(4): see the text and notes 1-2 *supra*.

5 *Ibid* s 131(5). As to appeals from a decision of the official receiver see para 1037 post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.36(1). For the meaning of 'deponent' see para 520 note 8 ante.

7 *Ibid* r 4.36(2). The functions of the official receiver in relation to the hearing of an application made under r 4.36(2) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 8(b)(ii). As to the contracting out of the official receiver's functions generally see paras 505-506 ante. As to the making of applications see para 1055 *et seq* post.

8 For the meaning of 'venue' see para 91 note 7 ante.

9 As to the giving of notice see para 1088 post.

10 Insolvency Rules 1986, SI 1986/1925, r 4.36(3).

11 Ibid r 4.36(4).

12 Ibid r 4.36(5). The making of a report by the official receiver to the court pursuant to r 4.36(5) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 14(d); and para 506 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 4.36(6).

14 Ibid r 4.36(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

522 Time for submitting or dispensing with statement of affairs

TEXT AND NOTE 14--SI 1986/1925 r 4.36(7) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/523. Expenses of statement of affairs.

523. Expenses of statement of affairs.

If any deponent¹ cannot himself prepare a proper statement of affairs, the official receiver may, at the expense of the assets, employ some person or persons to assist in the preparation of the statement². At the request of any deponent, made on the grounds that he cannot himself prepare a proper statement, the official receiver may authorise an allowance, payable out of the assets, towards expenses to be incurred by the deponent in employing some person or persons to assist him in preparing it³. Any such request by the deponent must be accompanied by an estimate of the expenses involved; and the official receiver may only authorise the employment of a named person or a named firm, being in either case approved by him⁴. Such authorisation given by the official receiver must be subject to such conditions, if any, as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers⁵. Nothing in these provisions relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the official receiver or the liquidator⁶. Any payment out of the assets under such provisions must be made in the prescribed order of priority⁷. These provisions may be applied, on application to the official receiver by any deponent, in relation to the making of an affidavit of concurrence⁸.

1 For the meaning of 'deponent' see para 520 note 8 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.37(1).

3 Ibid r 4.37(2).

4 Ibid r 4.37(3).

5 Ibid r 4.37(4).

6 Ibid r 4.37(5).

7 Ibid r 4.37(6). As to the general rules regarding priority of the order of payment of costs etc out of assets see r 4.218 (as amended); and para 810 post.

8 Ibid r 4.37(7). As to affidavits of concurrence see para 520 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

523 Expenses of statement of affairs

TEXT AND NOTES 1, 2--SI 1986/1925 r 4.37(1) amended: SI 2008/737.

TEXT AND NOTE 3--SI 1986/1925 r 4.37(2) amended: SI 2008/737.

TEXT AND NOTE 7--SI 1986/1925 r 4.37(6) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/524. Submission of accounts.

524. Submission of accounts.

Where a winding-up order has been made in relation to a company, specified persons¹ are required to give to the official receiver, whether or not he is the liquidator, such information concerning the company and its promotion, formation, business, dealings, affairs or property as the official receiver may reasonably require, and attend on the official receiver at such times as the latter may reasonably require². Any of such specified persons must, at the request of the official receiver, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify³. The period specified may begin from a date up to three years preceding the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared⁴. The court may, on the official receiver's application⁵, require accounts for any earlier period⁶. The provisions relating to the expenses of the statement of affairs⁷ apply, with the necessary modifications, in relation to accounts to be furnished⁸, as they apply in relation to the statement of affairs⁹. The accounts must, if the official receiver so requires, be verified by affidavit and, whether or not so verified, must be delivered to him within 21 days of the request¹⁰, or such longer period as he may allow¹¹. Two copies of the accounts and, where required, the affidavit must be delivered to the official receiver by whoever is required to furnish them; and the official receiver must file one copy in court¹², with the affidavit, if any¹³.

1 Ie those specified in the Insolvency Act 1986 s 235(3): see para 678 post.

2 See *ibid* s 235(2); and para 678 post.

3 Insolvency Rules 1986, SI 1986/1925, r 4.39(1).

4 *Ibid* r 4.39(2).

5 As to the making of applications see para 1055 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.39(3).

7 Ie *ibid* r 4.37: see para 523 ante.

8 Ie under *ibid* r 4.39.

9 *Ibid* r 4.39(4).

10 Ie under *ibid* r 4.39(1) (see the text and note 3 supra).

11 *Ibid* r 4.39(5).

12 For the meaning of 'file in court' see para 129 note 3 ante.

13 Insolvency Rules 1986, SI 1986/1925, r 4.39(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

524 Submission of accounts

TEXT AND NOTES 12, 13--SI 1986/1925 r 4.39(6) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/525. Further information.

525. Further information.

The official receiver may at any time require the deponents¹, or any one or more of them, to submit, in writing, further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts submitted². The information must, if the official receiver so directs, be verified by affidavit, and, whether or not so verified, delivered to him within 21 days of being required to submit the further information, or such longer period as he may allow³. Two copies of the documents containing the information and, where verification is directed, the affidavit, must be delivered by the deponent to the official receiver, who must file one copy in court⁴, with the affidavit, if any⁵.

1 For the meaning of 'deponent' see para 520 note 8 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.42(1). 'Accounts' refers to accounts submitted in pursuance of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended): r 4.42(1).

3 Ibid r 4.42(2).

4 For the meaning of 'file in court' see para 129 note 3 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.42(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

525 Further information

TEXT AND NOTES 4, 5--SI 1986/1925 r 4.42(3) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iii) Statement of Affairs and Accounts/526. Penalties.

526. Penalties.

If a person without reasonable excuse fails to comply with any obligation imposed in relation to the statement of affairs¹, he is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum, and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum².

1 Ie any of the obligations under the Insolvency Act 1986 s 131: see para 520 et seq ante.

2 Ibid ss 131(7), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to orders enforcing compliance with the obligation in relation to the statement of affairs see para 1026 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iv) Information to Creditors and Contributories/527. Reports by official receiver.

(iv) Information to Creditors and Contributories

527. Reports by official receiver.

The official receiver must, at least once after the making of the winding-up order, send a report to creditors¹ and contributories² with respect to the proceedings in the winding up, and the state of the company's affairs³. The official receiver must also include in the report estimates⁴ of the value of the prescribed part⁵ and of the company's net property⁶, both to the best of his knowledge and belief⁷, and whether, and if so why, he proposes to make an application to the court for an order on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits⁸. The official receiver must file in court⁹ a copy of any report sent under the provisions relating to the provision of information to creditors and contributories¹⁰.

1 Any reference in the Insolvency Rules 1986, SI 1986/1925, rr 4.43-4.49 (see the text and notes 2-10 infra; and para 528 et seq post) to creditors is a reference to creditors of the company who are known to the official receiver or, where a statement of the company's affairs has been submitted, are identified in the statement: r 4.44.

2 For the meaning of 'contributory' see para 703 post.

3 Insolvency Rules 1986, SI 1986/1925, r 4.43(1) (r 4.43(1) renumbered, and r 4.43(2) added, by SI 1987/1919). As to the official receiver's duty to investigate the company's affairs and submit reports to the court see para 513 ante.

4 Such estimates are not required to include any information the disclosure of which could seriously prejudice the commercial interests of the company: Insolvency Rules 1986, SI 1986/1925, r 4.43(1B) (r 4.43(1A), (1B) added by SI 2003/1730). If such information is excluded from the calculation the estimate must be accompanied by a statement to that effect: Insolvency Rules 1986, SI 1986/1925, r 4.43(1B) (as so added).

5 Insolvency Rules 1986, SI 1986/1925, r 4.43(1A)(a)(i) (as added: see note 4 supra). For these purposes, 'prescribed part' has the same meaning as it does in the Insolvency Act 1986 s 176A(2)(a) (as added) (see para 773 post): Insolvency Rules 1986, SI 1986/1925, r 13.13(15) (added by SI 2003/1730). The estimate of the value of the prescribed part must be included whether or not the official receiver proposes to make an application to the court under the Insolvency Act 1986 s 176A(5) (as added) (see para 773 post), or s 176A(3) (as added) (see para 773 post) applies: Insolvency Rules 1986, SI 1986/1925, r 4.43(1A)(a)(i) (as so added).

6 Ibid r 4.43(1A)(a)(ii) (as added: see note 4 supra).

7 Ibid r 4.43(1A)(a) (as added: see note 4 supra).

8 Ibid r 4.43(1A)(b) (as added: see note 4 supra). The application referred to in the text is an application under the Insolvency Act 1986 s 176A(5) (as added) (see para 773 post).

9 For the meaning of 'file in court' see para 129 note 3 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 4.43(2) (as added see note 3 supra). The provisions relating to the provision of information to creditors and contributories are Pt 4 Ch 7 (rr 4.43-4.49A) (as amended): see the text and notes 1-9 supra; and para 528 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

527 Reports by official receiver

NOTE 5--SI 1986/1925 r 13.13(16)-(19) added: SI 2010/686.

TEXT AND NOTES 9, 10--SI 1986/1925 r 4.43(2) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iv) Information to Creditors and Contributories/528. Report where statement of affairs lodged.

528. Report where statement of affairs lodged.

Where a statement of affairs¹ has been submitted and filed in court², the official receiver must send out to creditors³ and contributories⁴ a report containing a summary of the statement⁵ and such observations, if any, as he thinks fit to make with respect to it, or to the affairs of the company in general⁶.

1 See para 520 et seq ante.

2 For the meaning of 'file in court' see para 129 note 3 ante.

3 For the meaning of 'creditors' see para 527 note 1 ante.

4 For the meaning of 'contributory' see para 703 post.

5 Such statement may, if the official receiver thinks fit, be amplified, modified or explained by virtue of the Insolvency Rules 1986, SI 1986/1925, r 4.42 (see para 525 ante): r 4.45(1) (amended by SI 1987/1919).

6 Insolvency Rules 1986, SI 1986/1925, r 4.45(1) (as amended: see note 5 supra). The official receiver need not comply with this requirement if he has previously reported to creditors and contributories with respect to the company's affairs, so far as known to him, and he is of opinion that there are no additional matters which ought to be brought to their attention: r 4.45(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iv) Information to Creditors and Contributories/529. Report where statement of affairs dispensed with.

529. Report where statement of affairs dispensed with.

Where, in the company's case, release from the obligation to submit a statement of affairs¹ has been granted by the official receiver or the court², then, as soon as may be after the release has been granted, the official receiver must send to creditors³ and contributories⁴ a report containing a summary of the company's affairs, so far as within his knowledge, and his observations, if any, with respect to it, or to the affairs of the company in general⁵.

1 See para 520 et seq ante.

2 See para 522 ante.

3 For the meaning of 'creditors' see para 527 note 1 ante.

4 For the meaning of 'contributory' see para 703 post.

5 Insolvency Rules 1986, SI 1986/1925, r 4.46(1), (2). The official receiver need not comply with this requirement if he has previously reported to creditors and contributories with respect to the company's affairs, so far as known to him, and he is of opinion that there are no additional matters which ought to be brought to their attention: r 4.46(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iv) Information to Creditors and Contributories/530. Release or variation of duties to report by the court.

530. Release or variation of duties to report by the court.

The court may, on the official receiver's application¹, relieve him of any duty imposed on him to report to creditors and contributories², or authorise him to carry out the duty in another way³. In considering whether so to act, the court must have regard to the cost of carrying out the duty, the amount of the assets available, and the extent of the interest of creditors or contributories, or any particular class of them⁴.

1 As to the making of applications see para 1055 et seq post.

2 See paras 527-529 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.47(1).

4 Ibid r 4.47(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(iv) Information to Creditors and Contributories/531. Effect of stay of winding-up proceedings.

531. Effect of stay of winding-up proceedings.

If proceedings in the winding up are stayed by order of the court¹, any duty of the official receiver to send reports² ceases³. Where the court grants a stay, it may include in its order such requirements on the company as it thinks fit with a view to bringing the stay to the notice of creditors⁴ and contributories⁴.

1 See paras 902-903 post.

2 Ie under the Insolvency Rules 1986, SI 1986/1925, rr 4.43-4.47 (as amended): see paras 527-530 ante.

3 Ibid r 4.48(1).

4 For the meaning of 'creditors' see para 527 note 1 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.48(2). For the meaning of 'contributory' see para 703 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(v) First Meeting of Creditors and Contributories/532. Duties in relation to first meetings.

(v) First Meeting of Creditors and Contributories

532. Duties in relation to first meetings.

At any time when he is liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories¹ for the purpose of choosing a person to be liquidator of the company in place of the official receiver².

It is the duty of the official receiver as soon as practicable in the period of 12 weeks beginning with the day on which the winding-up order was made to decide whether to exercise his power to summon meetings³. If the official receiver decides to summon meetings of the company's creditors and contributories for the purpose of nominating a person to be liquidator in place of himself, he must fix a venue⁴ for each meeting, in neither case more than four months from the date of the winding-up order⁵. When for each meeting a venue has been fixed, notice⁶ of the meetings must be given to the court and, in the case of the creditors' meeting, to every creditor who is known to the official receiver or is identified in the company's statement of affairs; and, in the case of the contributories' meeting, to every person appearing, by the company's books or otherwise, to be a contributory of the company⁷. Notice to the court must be given forthwith, and the other notices must be given at least 21 days before the date fixed for each meeting respectively⁸. The notice to creditors must specify a time and date, not more than four days before the date fixed for the meeting, by which they must lodge proofs and, if applicable, proxies, in order to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies⁹. Notice of the meetings must also be given by public advertisement¹⁰.

If the official receiver decides not to exercise his power to summon meetings¹¹, he must give notice, before the end of that 12-week period, to the court and to the company's creditors and contributories¹².

Whether or not he has decided to exercise this power, he must exercise his power to summon meetings if he is at any time requested¹³ to do so by one-quarter, in value, of the company's creditors¹⁴. Accordingly, where the duty imposed by such a request arises before the official receiver has performed his duty to decide whether to summon meetings, or to give notice of his decision not to¹⁵, he is not required to perform the latter duty¹⁶. A notice given of the official receiver's decision not to summon meetings of the company's creditors and contributories¹⁷ must contain an explanation of the creditors' power¹⁸ to require the official receiver to summon meetings of the company's creditors and contributories¹⁹.

Where the official receiver receives a request by creditors for meetings of creditors and contributories to be summoned²⁰, and it appears to him that the request is properly made²¹, he must withdraw any notice previously given by him that he has decided not to summon such meetings²², fix the venue of each meeting for not more than three months from his receipt of the creditors' request, and act in accordance with the provisions which would have applied²³ had he decided to summon the meetings²⁴.

Meetings summoned by the official receiver under these provisions are known respectively as 'the first meeting of creditors' and 'the first meeting of contributories', and jointly as 'the first meetings in the liquidation'²⁵.

Where the company is an authorised deposit-taker²⁶ or former authorised deposit-taker²⁷, additional notices are required²⁸.

- 1 For the meaning of 'contributory' see para 703 post.
- 2 Insolvency Act 1986 s 136(4). As to such meetings see para 650 et seq post.
- 3 Ibid s 136(5)(a). No such duty arises where the official receiver does not become liquidator in the circumstances described in para 510 ante: see s 140(1) (as added); and para 558 post. As to summoning such meetings see para 650 post.
- 4 For the meaning of 'venue' see para 91 note 7 ante.
- 5 Insolvency Rules 1986, SI 1986/1925, r 4.50(1).
- 6 As to the giving of notice see para 1088 post.
- 7 Insolvency Rules 1986, SI 1986/1925, r 4.50(2).
- 8 Ibid r 4.50(3).
- 9 Ibid r 4.50(4). As to the procedure at such meetings generally see para 650 et seq post.
- 10 Ibid r 4.50(5).
- 11 Ie in pursuance of the Insolvency Act 1986 s 136(5)(a) (see the text and note 3 supra).
- 12 Ibid s 136(5)(b). No such duty arises where the official receiver does not become liquidator in the circumstances described in para 510 ante: see s 140(1) (as added); and para 558 post.
- 13 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see the text and note 20 infra.
- 14 Insolvency Act 1986 s 136(5)(c).
- 15 Ie under ibid s 136(5)(b): see the text and notes 11-12 supra.
- 16 Ibid s 136(5).
- 17 Ie under ibid s 136(5)(b).
- 18 Ie under ibid s 136(5)(c): see the text and notes 13-14 supra.
- 19 Ibid s 136(6).
- 20 Ie under ibid s 136(5)(c). For the prescribed form of request see the Insolvency Rules 1986, SI 1986/1925, rr 4.50, 12.7, Sch 4 Form 4.21.
- 21 Ie in accordance with the Insolvency Act 1986.
- 22 Ie under ibid s 136(5)(b).
- 23 Ie under the Insolvency Rules 1986, SI 1986/1925, r 4.50(2)-(5): see the text and notes 6-10 supra.
- 24 Ibid r 4.50(6).
- 25 Ibid r 4.50(7).
- 26 For the meaning of 'authorised deposit-taker' see para 460 note 18 ante.
- 27 For the meaning of 'former authorised deposit-taker' see para 460 note 19 ante.
- 28 Insolvency Rules 1986, SI 1986/1925, r 4.50(8) (amended by SI 2001/3649). The additional notices are required by the Insolvency Rules 1986, SI 1986/1925, r 4.72 (as amended) (see para 671 post): r 4.50(8) (as so amended).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

532 Duties in relation to first meetings

TEXT AND NOTES 8-10--SI 1986/1925 r 4.50(3), (4) substituted, r 4.50(5A) added: SI 2010/686.

TEXT AND NOTE 10--SI 1986/1925 r 4.50(5) substituted: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(v) First Meeting of Creditors and Contributories/533. Business at first meetings in the liquidation.

533. Business at first meetings in the liquidation.

At the first meeting of creditors¹, no resolutions may be taken other than the following:

- 1005 (1) a resolution to appoint a named insolvency practitioner² to be liquidator, or two or more insolvency practitioners as joint liquidators³;
- 1006 (2) a resolution to establish a liquidation committee⁴;
- 1007 (3) unless it has been resolved to establish a liquidation committee, a resolution specifying the terms on which the liquidator is to be remunerated⁵, or to defer consideration of that matter⁶;
- 1008 (4) if, and only if, two or more persons are appointed to act jointly as liquidator, a resolution specifying whether acts are to be done by both or all of them, or by only one⁷;
- 1009 (5) where the meeting has been requisitioned by creditors, a resolution authorising payment out of the assets, as an expense of the liquidation, of the cost of summoning and holding the meeting and any meeting of contributories so requisitioned and held⁸;
- 1010 (6) a resolution to adjourn the meeting for not more than three weeks⁹; and
- 1011 (7) any other resolution which the chairman thinks it right to allow for special reasons¹⁰.

These provisions also apply as regards the first meeting of contributories, except that no resolution specifying the terms on which the liquidator is to be remunerated (or deferring consideration of that matter)¹¹ or authorising payment out of the assets, as an expense of the liquidation, of the cost of summoning and holding the meeting and any meeting of contributories requisitioned and held¹² may be passed by the first meeting of contributories¹³.

At neither meeting may any resolution be proposed which has for its object the appointment of the official receiver as liquidator¹⁴.

1 For the meaning of 'the first meeting of creditors' see para 532 ante. As to the procedure at such meetings generally see para 650 et seq post.

2 As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.52(1)(a).

4 Ibid r 4.52(1)(b). As to the liquidation committee see para 629 et seq post.

5 As to the liquidator's remuneration generally see para 589 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.52(1)(c).

7 Ibid r 4.52(1)(d).

8 Ibid r 4.52(1)(e).

9 Ibid r 4.52(1)(f).

10 Ibid r 4.52(1)(g).

- 11 le a resolution under ibid r 4.52(1)(c) (see head (3) in the text).
- 12 le a resolution under ibid r 4.52(1)(e) (see head (5) in the text).
- 13 Ibid r 4.52(2).
- 14 Ibid r 4.52(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

533 Business at first meetings in the liquidation

TEXT AND NOTE 8--SI 1986/1925 r 4.52(1)(e) amended: SI 2008/737.

NOTE 14--SI 1986/1925 r 4.52(3A)-(3C) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(v) First Meeting of Creditors and Contributories/534. Choice of liquidator at meetings of creditors and contributories.

534. Choice of liquidator at meetings of creditors and contributories.

Where a company is being wound up by the court and separate meetings of the company's creditors and contributories¹ are summoned for the purpose of choosing a person to be liquidator of the company, the creditors and the contributories at their respective meetings may nominate a person to be liquidator of the company². The liquidator must be the person nominated by the creditors or, where no person has been so nominated, the person, if any, nominated by the contributories³. In the case of different persons being nominated, any contributory or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court⁴ for an order either appointing the person nominated as liquidator by the contributories to be liquidator instead of, or jointly with, the person nominated by the creditors, or appointing some other person to be liquidator instead of the person nominated by the creditors⁵.

¹ For the meaning of 'contributory' see para 703 post.

² Insolvency Act 1986 s 139(1), (2).

³ Ibid s 139(3).

⁵ As to the making of applications see para 1055 et seq post.

⁵ Insolvency Act 1986 s 139(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(v) First Meeting of Creditors and Contributories/535. Duty if no liquidator is appointed at the meetings.

535. Duty if no liquidator is appointed at the meetings.

If meetings of creditors and contributories are held in pursuance of a decision of the official receiver to hold such meetings¹ but no person is chosen to be liquidator of the company as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State². On such a reference, the Secretary of State must either make an appointment or decline to make one³.

¹ See under the Insolvency Act 1986 s 136(5)(a): see para 532 ante.

² Ibid s 137(2). As to the Secretary of State see para 11 note 10 ante. The taking of a decision by the official receiver, pursuant to s 137(2), whether or not to refer to the Secretary of State the need for an appointment of a liquidator in any case where at meetings held in pursuance of a decision under s 136(5)(a) (see para 532 ante) no person is chosen to be liquidator may not be contracted out by the official receiver: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 5(a). As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

³ Insolvency Act 1986 s 137(3). As to the duties of a liquidator so appointed and the procedure following such appointment see para 559 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vi) Books and Accounts; Handover of Assets to Liquidator/536. Accounts, books and handling of money received.

(vi) Books and Accounts; Handover of Assets to Liquidator

536. Accounts, books and handling of money received.

Where the official receiver is liquidator, he must comply with the obligations imposed on a liquidator under the provisions relating to accounts, books and other records, auditing of accounts, disposal of the company's books, papers and other records, dividends to creditors of a company and returns of capital to contributories of a company, unclaimed funds and dividends, investment or otherwise handling of funds in the winding up and payment of interest¹.

¹ See the Insolvency Regulations 1994, SI 1994/2507, reg 3(1); and paras 595 et seq, 841-842 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vi) Books and Accounts; Handover of Assets to Liquidator/537. Handover of assets to liquidator.

537. Handover of assets to liquidator.

Where the liquidator in a winding up by the court is appointed in succession to the official receiver acting as liquidator, the official receiver must, when the liquidator's appointment takes effect, forthwith do all that is required for putting him into possession of the assets¹. On taking possession of the assets, the liquidator must discharge any balance due to the official receiver on account of expenses properly incurred by him and payable², and any advances made by him in respect of the assets, together with interest on such advances³ at the date of the winding-up order⁴. Alternatively, the liquidator may, before taking office, give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets⁵. The official receiver has a charge on the assets in respect of such sums due to him; but, where the liquidator has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the liquidator from the proceeds of realisation, as being expenses properly incurred therein⁶. The liquidator must from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and must pay all the official receiver's expenses⁷. The official receiver must give to the liquidator all such information relating to the affairs of the company and the course of the winding up as he, the official receiver, considers to be reasonably required for the effective discharge by the liquidator of his duties as such⁸. The liquidator must also be furnished with a copy of any report made by the official receiver to creditors and contributories⁹. All fees, costs, charges and other expenses incurred in the course of winding up are to be regarded as expenses of the winding up¹⁰.

A liquidator in a winding up by the court, if he is not the official receiver, is under a duty to provide the official receiver with information and assistance in order to enable the official receiver to carry out his functions in relation to the winding up¹¹.

1 Insolvency Rules 1986, SI 1986/1925, r 4.107(1), (2).

2 *Ie* under the Insolvency Act 1986 and the Insolvency Rules 1986, SI 1986/1925 (as amended).

3 Interest is payable at the rate of 8% per annum: *ibid* r 4.107(3)(b); Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2).

4 Insolvency Rules 1986, SI 1986/1925, r 4.107(3).

5 *Ibid* r 4.107(4).

6 *Ibid* r 4.107(5).

7 *Ibid* r 4.107(6).

8 *Ibid* r 4.107(7).

9 *Ibid* r 4.107(8). As to the reports referred to see para 527 *et seq* ante.

10 *Ibid* r 12.2(1) (renumbered and amended by SI 2003/1730). As to the expenses of the winding up see para 805 *et seq* post.

11 See para 576 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/538. Public examination of officers.

(vii) Public Examination

538. Public examination of officers.

Where a company is being wound up by the court, the official receiver may at any time before the dissolution of the company apply to the court¹ for the public examination of any person who:

- 1012 (1) is or has been an officer² of the company³;
- 1013 (2) has acted as liquidator or administrator of the company or as receiver or manager⁴; or
- 1014 (3) not being or having been any such person, is or has been concerned, or has taken part, in the promotion, formation or management of the company⁵.

These provisions have no territorial limits and all relevant persons are accordingly liable to be publicly examined⁶.

1 See para 540 post. As to the making of applications see para 1055 et seq post. The making or conduct of an application to the court by the official receiver for a public examination under s 133(1) and the making or conduct of any application in relation to any public examination may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 15. As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

2 For the meaning of 'officer' see para 690 post.

3 Insolvency Act 1986 s 133(1)(a).

4 Ibid s 133(1)(b).

5 Ibid s 133(1)(c).

6 *Re Seagull Manufacturing Co Ltd (in liquidation)* [1993] Ch 345, [1993] 2 All ER 980, CA; *Re Casterbridge Properties Ltd (in liquidation)*, *Jeeves v Official Receiver* [2003] EWCA Civ 1246, [2003] 4 All ER 1041, [2004] 1 WLR 602.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/539. Request by creditors or contributories for public examination.

539. Request by creditors or contributories for public examination.

Unless the court otherwise orders, the official receiver must make an application for a public examination¹ if he is requested² to do so by one-half, in value, of the company's creditors or three-quarters, in value, of the company's contributories³.

Such a request⁴ to the official receiver by creditors or contributories must be made in writing and be accompanied by a list of the creditors concurring with the request and the amounts of their respective claims in the liquidation or, as the case may be, of the contributories so concurring, with their respective values, and from each creditor or contributory concurring, written confirmation of his concurrence; but, if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding, is alone sufficient, the request may be made by that creditor or contributory without the concurrence of others⁵. The request must specify the name of the proposed examinee, the relationship which he has, or has had, to the company and the reasons why his examination is requested⁶. Before an application to the court is made on the request, the requisitionists must deposit with the official receiver such sum as the latter may determine to be appropriate by way of security for the expenses of the hearing of a public examination, if ordered⁷. The official receiver must, within 28 days of receiving the request, make the application to the court⁸, unless he is of opinion that the request is an unreasonable one in the circumstances, in which case he may apply to the court for an order relieving him from the obligation to make the application for a public examination⁹; but, if the court so orders, and that application was made without notice, notice of the order must be given forthwith by the official receiver to the requisitionists; and, if that application is dismissed, the official receiver's application for a public examination¹⁰ must be made forthwith on conclusion of the hearing of that application¹¹.

1 Ie under the Insolvency Act 1986 s 133(1): see para 538 ante.

2 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see the text and notes 3-11 infra.

3 Insolvency Act 1986 s 133(2). The making or conduct of an application to the court by the official receiver to relieve him from an obligation to make an application for a public examination requested pursuant to s 133(2) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 16. As to the contracting out of the official receiver's functions generally see paras 505-506 ante. For the meaning of 'contributory' see para 703 post.

4 For the prescribed forms of request by creditors and contributories see the Insolvency Rules 1986, SI 1986/1925, rr 4.213, 12.7, Sch 4 Forms 4.62, 4.63.

5 Ibid r 4.213(1).

6 Ibid r 4.213(2).

7 Ibid r 4.213(3).

8 Ibid r 4.213(4).

9 Ibid r 4.213(5). The official receiver would otherwise be required to make the application under the Insolvency Act 1986 s 133(2): see the text and notes 1-3 supra.

10 Ie under ibid s 133(2).

11 Insolvency Rules 1986, SI 1986/1925, r 4.213(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/540. Order for public examination.

540. Order for public examination.

On an application by the official receiver for a public examination¹, the court must² direct that a public examination of the person to whom the application relates be held on a day to be appointed by the court and that person must attend on that day and be publicly examined as to the promotion, formation or management of the company, or as to the conduct of its business³ and affairs, or his conduct or dealings in relation to the company⁴.

If the official receiver applies to the court for the public examination of any person, a copy of the court's order⁵ must, forthwith⁶ after its making, be served on that person⁷. Where the application relates to a person other than a person who is or was an officer of the company or who has acted as liquidator or administrator of the company or as receiver and manager of its property⁸, it must be accompanied by a report by the official receiver indicating the grounds on which the person is supposed to be a person who is or has been concerned, or has taken part, in the promotion, formation or management of the company, and whether, in the official receiver's opinion, it is likely that service of the order on the person can be effected by post at a known address⁹. If in his report the official receiver gives it as his opinion that in these circumstances there is no reasonable certainty that service by post will be effective, the court may direct that the order be served by some means other than, or in addition to, post¹⁰. In such a case, the court must rescind the order if satisfied by the person to whom it is directed that he is not a person¹¹ who is or has been concerned, or has taken part, in the promotion, formation or management of the company¹².

1 See paras 539 ante, 542 post.

2 The Insolvency Act 1986 s 133 is essentially mandatory (*Re Avatar Communications Ltd* (1988) 4 BCC 473; *Re Richbell Strategic Holdings Ltd (in liquidation) (No 2)* [2000] 2 BCLC 794), and unless the public examination will serve no useful purpose, the court is required to make the order sought (*Re Casterbridge Properties Ltd (in liquidation)*, *Jeeves v Official Receiver* [2003] EWCA Civ 1246, [2003] 4 All ER 1041, [2004] 1 WLR 602). The proposed examinee is entitled to apply to rescind or vary the order under the Insolvency Rules 1986, SI 1986/1925, r 7.47 (see para 1030 post). However, the order will only be rescinded if the court concludes that there is some factor which should lead the court to conclude that it would not be proper to put any questions or to require any questions to be answered (eg if the examinee was liable to some sanction of a foreign jurisdiction which would make it wholly oppressive for him to answer any question): *Re Casterbridge Properties Ltd (in liquidation)*, *Jeeves v Official Receiver* supra.

3 As to the meaning of 'business' see para 156 note 1 ante.

4 Insolvency Act 1986 s 133(3).

5 For the prescribed form of order see the Insolvency Rules 1986, SI 1986/1925, rr 4.211, 12.7, Sch 4 Form 4.61 (substituted by SI 1987/1919).

6 'Forthwith' means no more than 'as soon as is reasonably practicable': *Re Seagull Manufacturing Co Ltd (in liquidation)* [1993] Ch 345 at 359, [1993] 2 All ER 980 at 989, CA, per Peter Gibson J.

7 Insolvency Rules 1986, SI 1986/1925, r 4.211(1). See also para 541 post.

8 Ie where the application relates to a person falling within the Insolvency Act 1986 s 133(1)(c): see para 538 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 4.211(2).

10 Ibid r 4.211(3).

11 If a person not falling within the Insolvency Act 1986 s 133(1)(c): see para 538 ante. Under the Companies Act 1985 ss 563, 564 (repealed) and the Companies (Winding-up) Rules 1949, SI 1949/330, rr 62-67 (revoked), the person ordered to be examined could apply to discharge the order only for want of jurisdiction in making it; he could not obtain an order that the report be sent back for further evidence: *Re New Travellers' Chambers Ltd* [1895] 1 Ch 395. The question to be considered was whether the report was so flimsy, so sketchy, or so unfair that the court exceeded its jurisdiction or erred in the exercise of its discretion in making the order: *Tejani v Official Receiver* [1963] 1 All ER 429, [1963] 1 WLR 59, PC. The application to discharge the order had to be made within a reasonable time: *Re Civil, Naval, and Military Outfitters Ltd* [1899] 1 Ch 215, CA; *Re National Stores Ltd* [1900] 1 Ch 27, CA. On an application to discharge, the court would not allow evidence in rebuttal of any of the contents of the report: *Re New Travellers' Chambers Ltd* supra; *Re National Stores Ltd* supra.

12 Insolvency Rules 1986, SI 1986/1925, r 4.211(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/541. Notice of hearing.

541. Notice of hearing.

The court's order for a public examination¹ must appoint a venue² for the examination of the person to whom it is directed ('the examinee'), and direct his attendance there³. The official receiver must give at least 14 days' notice⁴ of the hearing:

- 1015 (1) if a liquidator has been nominated or appointed, to him⁵;
- 1016 (2) if a special manager has been appointed, to him⁶; and
- 1017 (3) subject to any contrary direction of the court, to every creditor and contributory of the company who is known to the official receiver or is identified in the company's statement of affairs⁷.

The official receiver may, if he thinks fit, cause notice of the order to be given, by advertisement in one or more newspapers, at least 14 days before the date fixed for the hearing; but, unless the court otherwise directs, there must be no such advertisement before at least seven days have elapsed since the examinee was served with the order⁸.

¹ See para 540 ante. For the prescribed form of order see Insolvency Rules 1986, SI 1986/1925, rr 4.211, 12.7, Sch 4 Form 4.61 (substituted by SI 1987/1919).

² For the meaning of 'venue' see para 91 note 7 ante.

³ Insolvency Rules 1986, SI 1986/1925, r 4.212(1). See also para 540 ante.

⁴ As to the giving of notice see para 1088 post.

⁵ Insolvency Rules 1986, SI 1986/1925, r 4.212(2)(a).

⁶ Ibid r 4.212(2)(b).

⁷ Ibid r 4.212(2)(c).

⁸ Ibid r 4.212(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

541 Notice of hearing

TEXT AND NOTE 8--SI 1986/1925 r 4.212(3) substituted, r 4.212(4) added: SI 2009/642. SI 1986/1925 r 4.212(3A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/542. Persons entitled to participate in public examination.

542. Persons entitled to participate in public examination.

The following may take part in the public examination of a person¹:

- 1018 (1) the official receiver²;
- 1019 (2) the liquidator of the company³;
- 1020 (3) any person who has been appointed as special manager⁴ of the company's property⁵ or business⁶;
- 1021 (4) any creditor of the company who has tendered a proof in the winding up⁷; and
- 1022 (5) any contributory⁸ of the company⁹.

1 He a public examination concerning the matters in the Insolvency Act 1986 s 133(3): see para 540 ante.

2 Insolvency Act 1986 s 133(4)(a). The taking part by the official receiver in a public examination or the questioning by him of a person pursuant to s 133(4)(a) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 17. As to the contracting out of the official receiver's functions generally see paras 505-506 ante. For the meaning of 'contributory' see para 703 post.

3 Insolvency Act 1986 s 133(4)(b).

4 As to special managers see para 498 et seq ante.

5 As to the meaning of 'property' see para 489 note 8 ante.

6 Insolvency Act 1986 s 133(4)(c). As to the meaning of 'business' see para 156 note 1 ante.

7 Ibid s 133(4)(d). As to proofs by creditors see para 749 et seq post.

8 For the meaning of 'contributory' see para 703 post.

9 Insolvency Act 1986 s 133(4)(e).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/543. Failure to attend public examination.

543. Failure to attend public examination.

If a person without reasonable excuse fails at any time to attend his public examination¹, he is guilty of a contempt of court and liable to be punished accordingly².

In a case where a person without reasonable excuse fails at any time to attend his public examination or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his public examination, the court may cause a warrant³ to be issued to a constable or prescribed officer of the court⁴ for the arrest of that person and for the seizure of any books, papers, records, money or goods in that person's possession⁵; and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, until such time as the court may order⁶. When a person is arrested under such a warrant, the officer apprehending him must give him into the custody of the governor of the prison named in the warrant, who must keep him in custody until such time as the court otherwise orders and must produce him before the court as it may from time to time direct; and any property⁷ in the arrested person's possession which may be seized must be either lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or kept by the officer seizing it pending the receipt of written orders from the court as to its disposal as may be directed by the court in the warrant⁸.

1 le under the Insolvency Act 1986 s 133: see paras 538-539 ante.

2 Ibid s 134(1). See further CONTEMPT OF COURT. The making or conduct of any application to the court by the official receiver to commit for contempt of court a person who has failed to attend his public examination under s 133 may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 13(a). As to the contracting out of the official receiver's functions generally see paras 505-506 ante. For the meaning of 'contributory' see para 703 post.

3 For the prescribed form of warrant see the Insolvency Rules 1986, SI 1986/1925, rr 7.22, 12.7, Sch 4 Form 7.6. As to warrants generally see paras 1027-1028 post.

4 In the case of the High Court, the prescribed officers of the court are the tipstaff and his assistants of the court and, in the case of a county court, the registrar and the bailiffs: *ibid* r 7.21(2).

5 Insolvency Act 1986 s 134(2). See also *Re Avatar Communications Ltd* (1988) 4 BCC 473 (indemnity costs awarded against appellants who withdrew their appeal against orders issuing warrants for their arrest). The making or conduct of an application to the court by the official receiver pursuant to the Insolvency Act 1986 s 134(2) for the issue of a warrant for the arrest of a person and for the seizure of any books, papers, records, money or goods in that person's possession may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, Schedule para 18(a); and para 506 ante.

6 Insolvency Act 1986 s 134(3).

7 For these purposes, references to property include books, papers and records: Insolvency Rules 1986, SI 1986/1925, r 7.21(3).

8 *Ibid* r 7.22.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

543 Failure to attend public examination

NOTES 3, 7--SI 1986/1925 r 7.33 amended, Sch 4 Form 7.6 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/544. Examinee unfit for examination.

544. Examinee unfit for examination.

Where the examinee is suffering from any mental disorder or physical affliction or disability rendering him unfit to undergo or attend for public examination, the court may, on application in that behalf¹, either stay the order for his public examination or direct that it is to be conducted in such manner and at such place as it thinks fit². Such an application must be made by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee, or by a relative or friend of the examinee whom the court considers to be a proper person to make the application, or by the official receiver³. Where the application is made by a person other than the official receiver, then:

- 1023 (1) it must be supported⁴ by the affidavit of a registered medical practitioner as to the examinee's mental and physical condition⁵;
- 1024 (2) at least seven days' notice of the application must be given to the official receiver and the liquidator, if other than the official receiver⁶; and
- 1025 (3) before any order is made on the application, the applicant must deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of any examination that may be ordered on the application⁷.

An order made on the application may provide that the expenses of the examination are to be payable, as to a specified proportion, out of such a deposit, instead of out of the assets⁸.

Where the application is made by the official receiver, it may be made without notice, and may be supported by evidence in the form of a report⁹ by the official receiver to the court¹⁰.

1 As to the making of applications see para 1055 et seq post.

2 Insolvency Rules 1986, SI 1986/1925, r 4.214(1). For the prescribed form of order see rr 4.214(1), 12.7, Sch 4 Form 4.64 (substituted by SI 1987/1919).

3 Insolvency Rules 1986, SI 1986/1925, r 4.214(2). For the meaning of 'United Kingdom' see para 12 note 2 ante.

4 Ie unless the examinee is a patient within the meaning of the Mental Health Act 1983: see MENTAL HEALTH.

5 Insolvency Rules 1986, SI 1986/1925, r 4.214(3)(a).

6 Ibid r 4.214(3)(b).

7 Ibid r 4.214(3)(c).

8 Ibid r 4.214(3).

9 As to the use of reports see ibid r 7.9; and para 1080 post.

10 Ibid r 4.214(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

544 Examinee unfit for examination

NOTE 2--SI 1986/1925 r 4.214(1) amended, Sch 4 Form 4.64 substituted: SI 2007/1898.

NOTE 5--SI 1986/1925 r 4.214(3)(a) amended: SI 2007/1898.

TEXT AND NOTE 8--SI 1986/1925 r 4.214(3) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/545. Procedure at public examination.

545. Procedure at public examination.

The examinee must at the hearing be examined on oath; and he must answer all such questions as the court may put, or allow to be put, to him¹. The discretionary power of allowing a question to be put is in no way limited by the other statutory provisions, but must be judicially and carefully exercised in all the circumstances of each particular case². The fact that a question asked has some bearing on the issues in a claim against the person being examined is no ground for refusal to answer³. Any of the persons allowed to question the examinee⁴ may, with the approval of the court, made known either at the hearing or in advance of it, appear by solicitor or counsel; or he may in writing authorise another person to question the examinee on his behalf⁵. The examinee may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answers given by him, and may make representations on his behalf⁶.

There must be made in writing such record of the examination as the court thinks proper⁷. The record must be read over either to or by the examinee, signed by him, and verified by affidavit at a venue⁸ to be fixed by the court⁹. The written record may in any proceedings¹⁰ be used as evidence against the examinee of any statement made by him in the course of his public examination¹¹.

If criminal proceedings have been instituted against the examinee, and the court is of opinion that the continuance of the hearing would be calculated to prejudice a fair trial of those proceedings, the hearing may be adjourned¹².

1 Insolventcy Rules 1986, SI 1986/1925, r 4.215(1). As to the enforcement of court orders generally see r 7.19; and para 1025 post. The examinee is required to give the best answers that he is able to give and is not entitled to state that the applicant already has the information or that the information is contained in documents to which the examinee does not have access: see *Re Richbell Strategic Holdings Ltd (in liquidation) (No 2)* [2000] 2 BCLC 794 (where directions as to the conduct of the future examination were given).

2 *Re London and Globe Finance* (1902) 50 WR 253. The fact that answering a question might render the examinee liable to the sanction of a foreign jurisdiction may be a ground for disallowing a question: *Re Casterbridge Properties Ltd (in liquidation)*, *Jeeves v Official Receiver* [2003] EWCA Civ 1246, [2003] 4 All ER 1041, [2004] 1 WLR 602.

3 *Re Reliance Taxi-Cab Co Ltd* (1912) 28 TLR 529; cf *Re London and Globe Finance Co Ltd* (1902) 50 WR 253. It has been held in bankruptcy cases that the bankrupt is bound to reply to questions the answers to which it is in the public interest to know, even though they may incriminate him: *Re Atherton* [1912] 2 KB 251; *Re Paget, ex p Official Receiver* [1927] 2 Ch 85, CA; *Re Jawett* [1929] 1 Ch 108; and see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 299. These cases were discussed in *Bishopgate Investment Management Ltd v Maxwell* [1993] Ch 1, [1992] 2 All ER 856, CA, where the privilege against self-incrimination was stated obiter to have been abrogated by the Insolvency Act 1986 s 133 (see para 538 et seq ante).

4 *Ibid* s 133(4); see para 542 ante.

5 Insolventcy Rules 1986, SI 1986/1925, r 4.215(2).

6 *Ibid* r 4.215(3).

7 *Ibid* r 4.215(4). As to shorthand writers see para 684 post.

8 For the meaning of 'venue' see para 91 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 4.215(4). For the prescribed form of affidavit see rr 4.215, 12.7, Sch 4 Form 4.65.

10 ie whether under the Insolvency Act 1986 or otherwise.

11 Insolvency Rules 1986, SI 1986/1925, r 4.215(5).

12 Ibid r 4.215(6). As to adjournments see para 546 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/546. Adjournment of public examination.

546. Adjournment of public examination.

The public examination may be adjourned by the court from time to time, either to a fixed date or generally¹.

Where the examination has been adjourned generally, the court may at any time on the application² of the official receiver or of the examinee fix a venue³ for the resumption of the examination⁴, and give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it⁵. Where such an application is made by the examinee, the court may grant it on terms that the expenses of giving the notices required are to be paid by him and that, before a venue for the resumed public examination is fixed, he must deposit with the official receiver such sum as the latter considers necessary to cover those expenses⁶.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.216(1). For the prescribed form of order see rr 4.216, 12.7, Sch 4 Form 4.66 (Forms 4.66, 4.67 substituted by SI 1987/1919).

2 As to the making of applications see para 1055 et seq post.

3 For the meaning of 'venue' see para 91 note 7 ante.

4 For the prescribed form of order see the Insolventcy Rules 1986, SI 1986/1925, Sch 4 Form 4.67 (as substituted: see note 1 supra).

5 Ibid r 4.216(2).

6 Ibid r 4.216(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/(vii) Public Examination/547. Expenses of examination.

547. Expenses of examination.

Where a public examination of the examinee has been ordered by the court on a creditors' or contributories' requisition¹, the court may order that the expenses of the examination are to be paid, as to a specified proportion, out of the deposit paid by the requisitionists², instead of out of the assets³. In no case do the costs and expenses of a public examination fall on the official receiver personally⁴.

1 Ie under the Insolvency Rules 1986, SI 1986/1925, r 4.213: see para 539 ante.

2 Ie under *ibid* r 4.213(3): see para 539 ante.

3 *Ibid* r 4.217(1).

4 *Ibid* r 4.217(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

547 Expenses of examination

TEXT AND NOTES 1-3--SI 1986/1925 r 4.217(1) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (viii) Official Receiver's Fees, Expenses and Costs/548. Official receiver's remuneration as liquidator.

(viii) Official Receiver's Fees, Expenses and Costs

548. Official receiver's remuneration as liquidator.

When the official receiver acting as liquidator¹ makes a distribution to creditors or supervises a special manager², or when he is an interim receiver³ or is the provisional liquidator of a company being wound up, or where as official receiver he performs any duty as liquidator for which a fee is not provided⁴, the official receiver's remuneration for the services provided by himself and his officers in that capacity must be calculated on the total specified hourly rate⁵. Some of this remuneration is in respect of realising the assets, and other elements are in respect of distribution⁶. In a suitable case remuneration may be directed to be paid out of a suspense account in the official receiver's hands, which may not belong to the company⁷. The court has an inherent jurisdiction to order payment to the official receiver of his costs and charges out of assets held by the company on trust⁸.

1 See para 510 ante. As to the procedure and the official receiver's charge on assets where another person is appointed liquidator see para 537 ante.

2 As to special managers see para 498 et seq ante.

3 He appointed under the Insolvency Act 1986 s 286 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 835).

4 He under any order made under *ibid* s 414 (see para 1106 post) or s 415 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 816).

5 Insolvency Regulations 1994, SI 1994/2507, reg 35(1) (reg 35(1) amended, and Sch 2, Tables 2, 3 substituted, by SI 2004/472). The hourly rate is specified in the Insolvency Regulations 1994, SI 1994/2507, Sch 2, Tables 2, 3 (as so substituted). Table 2 (as substituted) must be used when calculating the remuneration of the official receiver of the London insolvency district and Table 3 (as substituted) must be used when calculating the remuneration of the official receiver of any other district: reg 35(2).

6 As to the priority on a distribution of the assets of the company see the Insolvency Rules 1986, SI 1986/1925, rr 4.218-4.220 (as amended); and para 810 et seq post.

7 *Re Introductions Ltd (No 2)* [1969] 3 All ER 697n, [1969] 1 WLR 1359n (proceeds of ultra vires trading).

8 *Re Exchange Securities and Commodities Ltd (No 2)* [1985] BCLC 392.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

548 Official receiver's remuneration as liquidator

TEXT AND NOTES 1-5--As to the circumstances in which the official receiver is entitled to charge remuneration see SI 1994/2507 reg 35 (substituted by SI 2005/512). An insolvency practitioner may be required to provide to creditors information about time spent on a case by him and his staff by grade: SI 1994/2507 reg 36A (added by SI 2005/512).

NOTE 5--SI 1994/2507 Sch 2, Tables 2, 3 substituted: SI 2009/482.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (viii) Official Receiver's Fees, Expenses and Costs/549. Official receiver's expenses.

549. Official receiver's expenses.

Any expenses¹ incurred by the official receiver, in whatever capacity he may be acting, in connection with proceedings taken against him in insolvency proceedings² are to be treated as expenses of the insolvency proceedings for this purpose³. In relation to any sums due to the official receiver in relation to such expenses, he has a charge on the company's assets⁴.

1 For these purposes, 'expenses' includes damages: Insolvency Rules 1986, SI 1986/1925, r 10.4(1).

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 10.4(1). See also para 537 ante.

4 Ibid rr 10.4(2), 13.8(a). As to the order of priority of distribution of the assets of the company see rr 4.218-4.220 (as amended); and para 810 et seq post. As to the procedure where another person is appointed liquidator see para 537 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(5) OFFICIAL RECEIVER/ (viii) Official Receiver's Fees, Expenses and Costs/550. Official receiver's liability for costs.

550. Official receiver's liability for costs.

The official receiver is not personally liable for any costs incurred by a person in respect of an application to set aside or to vary his act or decision in settling the list of contributories, or varying or adding to the list¹. Nor is the official receiver personally liable for any costs on an appeal against his decision with respect to the admission of or rejection of a creditor's proof for dividend², nor for the costs and expenses of a public examination³. When he is also liquidator and acts in his capacity as such, he is subject to the rules as to costs affecting the other liquidators⁴. Without prejudice to the statutory provisions⁵ by virtue of which the official receiver is not in any event to be liable for costs and expenses, where he is made a party to any proceedings on the application of another party to the proceedings, he will not be personally liable for costs unless the court otherwise directs⁶.

1 Insolvent Rules 1986, SI 1986/1925, r 4.201. See para 725 post.

2 Ibid r 4.83(6). As to such appeals see para 1037 post.

3 See ibid r 4.217(2); and para 547 ante.

4 *Re John Tweddle & Co Ltd* [1910] 2 KB 697 at 706, CA. As to the costs of a liquidator see para 593 post. The official receiver should only allow his name to be used in proceedings under an indemnity as to costs in a clear case, or where authorised by the liquidation committee: *Re Anglo-Sardinian Antimony Co* (1894) 38 Sol Jo 682. As to the liquidation committee see para 629 et seq post.

5 In the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

6 Ibid r 7.39 (substituted by SI 1999/1022). As to costs generally see para 1096 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(6) FUNCTIONS OF THE SECRETARY OF STATE/551. Rules and regulations and appointment of officers.

(6) FUNCTIONS OF THE SECRETARY OF STATE

551. Rules and regulations and appointment of officers.

The Secretary of State¹ has many statutory powers and duties with respect to the winding up of companies². The concurrence of the Secretary of State is required for the making of general rules relating to the insolvency or winding up of companies, and matters connected with or arising out of insolvency or winding up³.

The Secretary of State may⁴, subject to the Insolvency Act 1986 and the Insolvency Rules 1986⁵, make regulations with respect to any matter provided for in the rules as relates to the carrying out of the functions of a liquidator, provisional liquidator, administrator or administrative receiver of a company including, without prejudice to the generality of the above, provision with respect to the following matters arising in companies winding up:

- 1026 (1) the preparation and keeping by liquidators, provisional liquidators, and the official receiver, of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them⁶;
- 1027 (2) the auditing of liquidators' accounts⁷;
- 1028 (3) the manner in which liquidators are to act in relation to the insolvent company's books, papers and other records, and the manner of their disposal by the responsible insolvency practitioner⁸ or others⁹;
- 1029 (4) the supply by the liquidator to creditors and members of the company, to contributories in its winding up, and to the liquidation committee¹⁰ of copies of documents relating to the insolvency and the affairs of the insolvent company, on payment, in such cases as may be specified by the regulations, of the specified fee¹¹;
- 1030 (5) the manner in which insolvent estates are to be distributed by liquidators, including provision with respect to unclaimed funds and dividends¹²;
- 1031 (6) the manner in which moneys coming into the hands of a liquidator in the course of his administration are to be handled and invested, and the payment of interest on sums which, in pursuance of statutory regulations¹³, have been paid into the Insolvency Services Account¹⁴;
- 1032 (7) the amount (or the manner of determining the amount) to be paid to the official receiver by way of remuneration when acting as provisional liquidator or liquidator¹⁵.

Such regulations may confer a discretion on the court, make non-compliance with any of the regulations a criminal offence, and make different provision for different cases, including different provision for different areas, and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient¹⁶.

The Secretary of State appoints, removes, defines the duties of, and fixes the salaries of officers who are concerned in the winding up of companies, such as official receivers¹⁷ and the registrar of companies¹⁸.

1 As to the Secretary of State see para 11 note 10 ante.

- 2 As to the Secretary of State's functions which are not exclusively concerned with winding up see COMPANIES vol 14 (2009) PARAS 6-8.
- 3 See the Insolvency Act 1986 s 411(1)(b); and para 1041 post.
- 4 le pursuant to ibid s 411(2), Sch 8 para 27: see para 1041 post.
- 5 le the Insolvency Rules 1986, SI 1986/1925 (as amended).
- 6 Ibid r 12.1(1)(a) (r 12.1(1), (3) amended by SI 1987/1919). As to the official receiver see para 503 et seq ante.
- 7 Insolvency Rules 1986, SI 1986/1925, r 12.1(1)(b) (as amended: see note 6 supra).
- 8 For these purposes, 'the responsible insolvency practitioner' means the person acting in a company insolvency as supervisor of a voluntary arrangement, administrator, administrative receiver, liquidator or provisional liquidator: ibid rr 13.1, 13.9(1)(a). Any reference to the liquidator or provisional liquidator includes the official receiver when acting in the relevant capacity: r 13.9(2).
- 9 Ibid r 12.1(1)(c) (as amended: see note 6 supra).
- 10 As to the liquidation committee see para 629 et seq post.
- 11 Insolvency Rules 1986, SI 1986/1925, r 12.1(1)(d)(i) (as amended: see note 6 supra).
- 12 Ibid r 12.1(1)(e) (as amended: see note 6 supra).
- 13 le made under ibid r 12.1(1) (as amended).
- 14 Ibid r 12.1(1)(f) (as amended (see note 6 supra); and r 12.1(1)(f) further amended by SI 2001/763). As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 post; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.
- 15 Insolvency Rules 1986, SI 1986/1925, r 12.1(1)(g) (as amended: see note 6 supra).
- 16 Ibid r 12.1(3) (as amended: see note 6 supra).
- 17 See the Insolvency Act 1986 s 399(2); and para 503 ante.
- 18 See the Companies Act 1985 s 704 (as amended); and COMPANIES vol 14 (2009) PARA 131. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(6) FUNCTIONS OF THE SECRETARY OF STATE/552. Formerly authorised banks.

552. Formerly authorised banks.

The Secretary of State may, by order made with the concurrence of the Treasury and after consultation with the Financial Services Authority¹, provide that such provisions in Parts I to VII of the Insolvency Act 1986² as may be specified in the order apply in relation to specified persons³ with such modifications as may be so specified⁴. Any such order may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient⁵.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

2 I.e. the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended).

3 I.e. any person who: (1) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 or the Banking Act 1987; but (2) does not have permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (regulated activities: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 348 et seq) to accept deposits: Insolvency Act 1986 s 422(1)(a), (b) (s 422(1) substituted, s 422(1A) added, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 35). The amendments made to these provisions do not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003: see the Enterprise Act 2002 s 249(1), (2); and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). Where a special administration regime has effect or a petition for an administration order has been presented before 15 September 2003, the power by order to apply provisions of the Insolvency Act 1986 Pts I-VII (as amended) with modifications is exercisable in relation to authorised institutions and former authorised institutions within the meaning of the Banking Act 1987: Insolvency Act 1986 s 422(1) (amended by the Banking Act 1987 s 108(1), Sch 6 para 25(2); and by the Bank of England Act 1998 s 23(1), Sch 5 para 37); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

The Insolvency Act 1986 s 422(1)(b) (as substituted) must be construed in accordance with the Financial Services and Markets Act 2000 s 22, Sch 22, and any relevant order made under s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84); Insolvency Act 1986 s 422(1A) (as so added).

4 Ibid s 422(1) (as substituted: see note 3 supra). As to the Secretary of State see para 11 note 10 ante. In exercise of this power, the Banks (Administration Proceedings) Order 1989, SI 1989/1276 (as amended) has been made: see para 147 ante.

5 Insolvency Act 1986 s 422(2). An order under s 422 (as amended) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 422(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

552 Formerly authorised banks

NOTE 4--SI 1989/1276 (as amended) replaced: Banks (Former Authorised Institutions) (Insolvency) Order 2006, SI 2006/3107.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(6) FUNCTIONS OF THE SECRETARY OF STATE/553. Surveillance of winding up.

553. Surveillance of winding up.

The Secretary of State has a duty to determine whether or not to appoint a liquidator other than the official receiver where the official receiver applies to or makes a reference to the Secretary of State for the appointment of a liquidator in his place¹. At any time when the official receiver is liquidator, the functions of the liquidation committee² are vested in the Secretary of State³. Where there is for the time being no liquidation committee and the liquidator is a person other than the official receiver, the functions of the liquidation committee are similarly vested in the Secretary of State⁴.

The Secretary of State has power to inspect the records required to be maintained by all insolvency practitioners⁵. The Secretary of State exercises a general surveillance over the records and accounts required to be maintained by liquidators, and may carry out an audit of the accounts required to be submitted to him by liquidators⁶.

The Secretary of State determines the time of the release of liquidators in certain cases⁷.

1 See paras 510, 535 ante, 559 post. As to the Secretary of State see para 11 note 10 ante. As to the official receiver see para 503 et seq ante. As to liquidators see para 555 et seq post.

2 See para 629 et seq post.

3 See para 517 ante.

4 Such functions may, however, be exercised by the official receiver: see para 517 ante.

5 See para 42 ante.

6 See paras 598 et seq, 978 post.

7 See para 623 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(6) FUNCTIONS OF THE SECRETARY OF STATE/554. Duties in relation to the Insolvency Services Account and investment of funds.

554. Duties in relation to the Insolvency Services Account and investment of funds.

The Secretary of State must keep an account with the Bank of England, called the Insolvency Services Account, into which all moneys received by him in respect of insolvency proceedings must be paid¹. He may allow liquidators to operate a local bank account instead of paying moneys into the Insolvency Services Account². The investment and handling of funds in a liquidation are subject to the control of the Secretary of State³.

1 As to the Secretary of State see para 11 note 10 ante. As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq. As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30. As to the Secretary of State's power to authorise payments out of the Insolvency Services Account see para 608 post.

2 See para 605 post. As to liquidators see para 555 et seq post.

3 See paras 606, 1010 et seq post.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(i) Appointment of Liquidator/555. Different kinds of liquidators.

(7) LIQUIDATOR

(i) Appointment of Liquidator

555. Different kinds of liquidators.

There are three kinds of liquidators in a winding up by order of the court:

- 1033 (1) a provisional liquidator, who may be appointed at any time after the winding-up petition has been presented and before the winding-up order has been made¹;
- 1034 (2) the official receiver acting as liquidator ex officio from the time the winding-up order is made until he is displaced by the appointment of some other person as liquidator²; and
- 1035 (3) a liquidator appointed by the creditors or contributories, by the court or by the Secretary of State instead of, or to replace, the official receiver³.

1 See para 491 ante.

2 See paras 510 ante, 557 et seq post. As to the official receiver see para 503 et seq ante.

3 See para 557 et seq post. As to the Secretary of State see para 11 note 10 ante.

UPDATE

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(i) Appointment of Liquidator/556. Liquidator to be insolvency practitioner.

556. Liquidator to be insolvency practitioner.

A person who acts as the liquidator of a company, other than the official receiver¹, must be qualified to act as an insolvency practitioner in relation to the company².

¹ See the Insolvency Act 1986 s 230(5). As to the official receiver see para 503 et seq ante.

² Ibid s 230(3). As to insolvency practitioners, their qualification, and the security to be provided see para 8 et seq ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(i) Appointment of Liquidator/557. Appointment by creditors or contributories.

557. Appointment by creditors or contributories.

At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator in his place¹. If necessary or convenient, these meetings may be reconvened².

Where a person is appointed as liquidator either by a meeting of creditors or by a meeting of contributories, the chairman of the meeting must certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified to be the liquidator³, and that he consents so to act⁴. The liquidator's appointment is effective from the date on which the appointment is certified, that date to be indorsed on the certificate⁵. The chairman of the meeting, if not himself the official receiver, must send the certificate to the official receiver⁶; and the official receiver must in any case send the certificate to the liquidator and file a copy of it in court⁷. On receiving his certificate of appointment, the liquidator must give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories⁸.

1 Insolvency Act 1986 s 136(4). As to the summoning and holding of the meetings and the official receiver's duties and powers see paras 532 et seq ante, 650 et seq post. As to the official receiver see para 503 et seq ante.

2 *Re Manmac Farmers Ltd* [1968] 1 All ER 1150, [1968] 1 WLR 572.

3 As to insolvency practitioners and their qualification see para 8 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.100(1), (2). For the prescribed forms of certificate of appointment of a liquidator or of two or more liquidators see rr 4.100, 12.7, Sch 4 Forms 4.27, 4.28.

5 *Ibid* r 4.100(3) (r 4.100(3)-(5) substituted by SI 1987/1919).

6 *Ibid* r 4.100(4) (as substituted: see note 5 supra).

7 *Ibid* r 4.100(5) (as substituted: see note 5 supra). For the meaning of 'file in court' see para 129 note 3 ante.

8 *Ibid* r 4.106(1). As to the expenses of advertisement and registration of the appointment see para 561 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

557 Appointment by creditors or contributories

TEXT AND NOTES--See SI 1986/1925 r 4.101B (Official receiver not to be appointed liquidator) (added by SI 2010/686).

TEXT AND NOTE 8--SI 1986/1925 r 4.106(1) substituted: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(i) Appointment of Liquidator/558. Appointment of liquidator by the court.

558. Appointment of liquidator by the court.

Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect¹, the court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect². Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement³ approved in relation to the company, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made⁴. Where the court appoints a liquidator⁵, the official receiver does not become the liquidator as otherwise provided⁶, and he has no duty⁷ in respect of the summoning of creditors' or contributories' meetings⁸.

It is inappropriate for the court to appoint a provisional liquidator as liquidator of a company, although leave may be given to the liquidator to retain the services of the former provisional liquidators as special managers⁹.

Where different persons are nominated liquidator at meetings of creditors and contributories held for the purpose of appointing a liquidator, the court has power, on the application of any creditor or contributory, to appoint a liquidator or joint liquidator¹⁰.

Where the liquidator is appointed by the court under these provisions, the court's order must not issue unless and until the person appointed has filed in court¹¹ a statement to the effect that he is an insolvency practitioner, duly qualified to be the liquidator¹², and that he consents so to act¹³. Thereafter the court must send two copies of the order to the official receiver; one of the copies must be sealed, and this must be sent to the person appointed as liquidator¹⁴. The liquidator's appointment takes effect from the date of the order¹⁵. The liquidator must, within 28 days of his appointment, give notice¹⁶ of it to all creditors and contributories of the company of whom he is aware in that period; alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions¹⁷. In any such notice or advertisement, the liquidator must state whether he proposes to summon meetings of creditors and contributories of the company for the purpose of establishing a liquidation committee¹⁸, or proposes to summon only a meeting of creditors for that purpose; and, if he does not propose to summon any such meeting, he must set out the powers of the creditors¹⁹ to require him to summon one²⁰.

1 As to administration orders see para 145 et seq ante.

2 Insolvency Act 1986 s 140(1) (substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 17). The substitution of these provisions does not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003: see the Enterprise Act 2002 s 249(1), (2); and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). In those circumstances, it is provided that where a winding-up order is made immediately upon the discharge of an administration order, the court may appoint as liquidator of the company the person who ceased on the discharge of the administration order to be the administrator of the company: Insolvency Act 1986 s 140(1) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). See further *Re Charnley Davies Business Services Ltd* (1987) 3 BCC 408 (administrator appointed liquidator to prevent delay if official receiver appointed).

3 I.e. an arrangement approved in relation to the company under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

- 4 Ibid s 140(2).
- 5 Ie under ibid s 140(1) (as substituted) or s 140(2): see the text and notes 1-4 supra.
- 6 Ie by ibid s 136(2) (see para 510 ante). As to the official receiver see para 503 et seq ante.
- 7 Ie under ibid s 136(5)(a) or s 136(5)(b) (see para 532 ante).
- 8 Ibid s 140(3).
- 9 *Re WF Fearman Ltd (No 2)* (1988) 4 BCC 141.
- 10 See the Insolvency Act 1986 s 139; and para 534 ante.
- 11 For the meaning of 'file in court' see para 129 note 3 ante.
- 12 As to insolvency practitioners and their qualification see para 8 et seq ante.
- 13 Insolvency Rules 1986, SI 1986/1925, r 4.102(1), (2). For the prescribed forms of order of the court appointing a liquidator, or two or more liquidators see rr 4.102, 12.7, Sch 4 Forms 4.29, 4.30.
- 14 Ibid r 4.102(3).
- 15 Ibid r 4.102(4).
- 16 As to the giving of notice see para 1088 post.
- 17 Insolvency Rules 1986, SI 1986/1925, r 4.102(5).
- 18 As to the liquidation committee see para 629 et seq post.
- 19 Ie under the Insolvency Act 1986 s 141: see para 629 post.
- 20 Insolvency Rules 1986, SI 1986/1925, r 4.102(6). As to the expenses of giving notice or advertisement and registration of the appointment see para 561 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

558 Appointment of liquidator by the court

TEXT AND NOTES 11-20--SI 1986/1925 r 4.102(5) substituted, r 4.102(6) amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(i) Appointment of Liquidator/559. Appointment by Secretary of State.

559. Appointment by Secretary of State.

Where the official receiver applies to the Secretary of State to appoint a liquidator in place of himself¹, or refers to the Secretary of State the need for an appointment², then, if the Secretary of State makes an appointment, he must send two copies of the certificate of appointment to the official receiver, who must transmit one such copy to the person appointed, and file the other in court³. The certificate must specify the date from which the liquidator's appointment is to be effective⁴.

Where a liquidator has been so appointed by the Secretary of State, the liquidator must give notice⁵ of his appointment to the company's creditors or, if the court so allows, must advertise his appointment in accordance with the directions of the court⁶. In that notice or advertisement the liquidator must state whether he proposes to summon a general meeting of the company's creditors⁷ for the purpose of determining, together with any meeting of contributories, whether a liquidation committee should be established⁸ and, if he does not propose to summon such a meeting, he must set out the power of the creditors⁹ to require him to summon one¹⁰.

1 Ie under the Insolvency Act 1986 s 137(1): see para 510 ante. As to the official receiver see para 503 et seq ante.

2 Ie under ibid s 137(2): see para 535 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.104(1), (2). For the meaning of 'file in court' see para 129 note 3 ante. As to the Secretary of State see para 11 note 10 ante.

4 Ibid r 4.104(3).

5 As to the giving of notice see para 1088 post.

6 Insolvency Act 1986 s 137(4).

7 Ie under ibid s 141: see para 629 post.

8 Ie under ibid s 141.

9 Ie under ibid s 141.

10 Ibid s 137(5). As to the expenses of giving notice or advertisement and registration of the appointment see para 561 post.

UPDATE

438-938 Winding Up by the Court

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560. Authentication of liquidator's appointment.

A copy of the certificate of the liquidator's appointment or, as the case may be, a sealed copy of the court's order, or a copy of a notice informing the registrar of companies that the company is moving from administration to creditors' voluntary liquidation¹, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up².

¹ See under the Insolvency Act 1986 Sch B1 para 83(3) (as added) (see para 370 ante). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

² Insolvency Rules 1986, SI 1986/1925, r 4.105 (amended by SI 2003/1730).

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438-938 Winding Up by the Court

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561. Expenses of giving notice or advertisement, and registration of appointment.

The expense of giving notice or advertisement of the appointment of a liquidator by creditors or contributories¹, by the court² or by the Secretary of State³ must be borne in the first instance by the liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the liquidation⁴. In the case of a winding up by the court, the liquidator must also forthwith notify his appointment to the registrar of companies, however he is appointed⁵.

1 See para 557 ante.

2 See para 558 ante.

3 See para 559 ante. As to the Secretary of State see para 11 note 10 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.106(3). As to the priority of expenses of the liquidator in a distribution of the company's assets see rr 4.218-4.220 (as amended); and para 810 et seq post.

5 Ibid r 4.106(4) (amended by SI 1987/1919). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the prescribed form of notice of appointment of liquidator in a winding up by the court see the Insolvency Rules 1986, SI 1986/1925, rr 4.106, 12.7, Sch 4 Form 4.31.

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438-938 Winding Up by the Court

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561 Expenses of giving notice or advertisement, and registration of appointment

TEXT AND NOTES 1-4--SI 1986/1925 r 4.106(3) amended: SI 2008/737.

NOTE 5--SI 1986/1925 Sch 4 Form 4.31 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(i) Appointment of Liquidator/562. Appointment of two or more liquidators.

562. Appointment of two or more liquidators.

Where an appointment or nomination of any person to the office of liquidator relates to more than one person or has the effect that the office is to be held by more than one person, the appointment or nomination must declare whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of the persons for the time being holding the office of liquidator¹.

¹ Insolvency Act 1986 s 231(1), (2) (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 20, Sch 26).

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563. Corrupt inducement affecting appointment as liquidator.

A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum¹.

¹ Insolvency Act 1986 ss 164, 430, Sch 10. As to the statutory maximum see para 10 note 1 ante. As to the rule against solicitation to procure a liquidator's appointment see the Insolvency Rules 1986, SI 1986/1925, r 4.150; and para 662 post.

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(ii) Liquidator's Position

564. Validity of liquidator's acts.

The acts of an individual as liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications¹.

¹ Insolvency Act 1986 s 232 (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 21, Sch 26). The defects in question are limited to defects in the form or procedure for the appointment; and the Insolvency Act 1986 s 232 (as amended) does not protect acts done where there was no power to appoint at all and the appointment is invalid: see s 34; and COMPANIES vol 15 (2009) PARA 1341.

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565. Liquidator's style.

Where a person other than the official receiver is liquidator, he must be described by the style of 'the liquidator' of the particular company in respect of which he is appointed, and not by his individual name¹.

¹ Insolvency Act 1986 s 163(a). As to the style of the official receiver as liquidator see para 511 ante. As to the official receiver see para 503 et seq ante.

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438-938 Winding Up by the Court

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566. Liquidator's status.

Whether he is the official receiver or some other person, the liquidator in a winding up by the court is an officer of the court¹, at any rate for some purposes². He is the governing body of the company³ and also the receiver and manager of its assets, and he fills the character of an accountant to make up the books and accounts so as to ascertain each contributory's or member's share of liability and of any surplus⁴. In receiving calls, the liquidator receives them as trustee⁵.

Since, in a winding up, the company's assets must be collected and applied in discharge of its liabilities, its property is in the nature of trust property, affected with an obligation to be dealt with by the liquidator in a particular way; and this trust is constituted for the benefit of all the creditors⁶. The liquidator is not, however, a trustee, in the strict sense of being a trustee, for each creditor or contributory of the company⁷.

1 *Gooch's Case* (1872) 7 Ch App 207 at 211; *Re Opera Ltd* [1891] 2 Ch 154 (revsd on other grounds [1891] 3 Ch 260, CA); and see para 504 ante.

2 See the Insolvency Act 1986 s 160; and para 588 post. See also the Insolvency Rules 1986, SI 1986/1925, rr 4.179(1), 4.202; and para 574 post. See *Re Hill's Waterfall Estate and Gold Mining Co* [1896] 1 Ch 947 at 954; *Re London County Commercial Reinsurance Office Ltd* [1922] 2 Ch 67 at 84; and see further para 571 post. As to the official receiver see para 503 et seq ante.

3 *Hillman v Crystal Bowl Amusements Ltd* [1973] 1 All ER 379, [1973] 1 WLR 162.

4 *Gooch's Case* (1872) 7 Ch App 207. As to the liquidator standing in the same position as a receiver appointed by the court see the Insolvency Rules 1986, SI 1986/1925, r 4.179(2); and para 574 post. As regards contracts of the company, the liquidator, unlike such a receiver, is, in relation to third parties, the agent of the company: *Stead, Hazel & Co v Cooper* [1933] 1 KB 840 at 843; *Stewart v Engel* [2000] 2 BCLC 528, [2000] BCC 741 (revsd on a different point [2000] 3 All ER 518, [2000] 1 WLR 2268, CA).

5 *Black & Co's Case* (1872) 8 Ch App 254 at 262.

6 *Re Oriental Inland Steam Co, ex p Scinde Rly Co* (1874) 9 Ch App 557 at 559-560; *IRC v Olive Mill Ltd* [1963] 2 All ER 130, [1963] 1 WLR 712; and see *Ayerst v C & K (Construction) Ltd* [1976] AC 167, [1975] 2 All ER 537, HL.

7 *Knowles v Scott* [1891] 1 Ch 717 at 722-723; cf *Re London and Caledonian Marine Insurance Co* (1879) 11 ChD 140 at 144, CA. In *Re Windsor Steam Coal Co (1901) Ltd* [1928] Ch 609 (on appeal [1929] 1 Ch 151, CA), Maugham J held that a liquidator was not a trustee within the meaning of the Trustee Act 1925; but the Court of Appeal (at 161 and at 169) left the point open and affirmed his decision on other grounds. See also *Re Home and Colonial Insurance Co Ltd* [1930] 1 Ch 102. As to claims by a creditor or contributory against the liquidator after dissolution see para 932 post; and as to a liquidator's liability for misfeasance see para 696 post.

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567. Fiduciary position of liquidator.

A liquidator stands in a fiduciary position towards the company. Thus where he has sold its property nominally to another company, but really to himself, he is accountable for the secret profit as a trustee for the company¹.

If, in the administration of the estate, the liquidator enters into any transaction with a person who is an associate² of his, the court may, on the application³ of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it⁴. This does not apply, however, if either the transaction was entered into with the prior consent of the court, or it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate⁵. Nothing in these provisions is to be taken as prejudicing the operation of any rule of law or equity with respect to a liquidator's dealings with trust property, or the fiduciary obligations of any person⁶.

1 *Silkstone and Haigh Moor Coal Co v Edey* [1900] 1 Ch 167. On winding up the property affected 'has ceased to be beneficially the property of the company': *Re Oriental Inland Steam Co, ex p Scinde Rly Co* (1874) 9 Ch App 557. A liquidator is also under a duty as a fiduciary not to let his duties and interests conflict or to allow a conflict of duties: *Re Corbenstoke Ltd (No 2)* [1990] BCLC 60, 5 BCC 767; and see *Fielding v Seery* [2004] BCC 315.

2 For the meaning of 'associate' see para 5 ante.

3 As to the making of applications see para 1055 et seq post.

4 Insolvency Rules 1986, SI 1986/1925, r 4.149(1).

5 Ibid r 4.149(2).

6 Ibid r 4.149(3).

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(iii) Liquidator's Functions and Duties

568. Liquidator's general functions.

The functions of the liquidator of a company which is being wound up by the court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it¹.

¹ Insolvency Act 1986 s 143(1).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iii) Liquidator's Functions and Duties/569. Liquidator's general duty.

569. Liquidator's general duty.

As an officer of the court¹, the liquidator in a winding up by the court must maintain an even and impartial hand between all the individuals whose interests are involved in the winding up. It is his duty to the whole body of creditors, the whole body of shareholders, and to the court to make himself thoroughly acquainted with the company's affairs, and to suppress or conceal nothing coming to his knowledge in the course of his investigation which is material to ascertain the exact truth in every case before the court; and it is for the judge to see that he does his duty in this respect².

After a winding-up order has been made, creditors and contributories have no right to inspect the company's books and papers except under a court order³, although this must not be taken as excluding or restricting any statutory rights of a government department⁴ or person acting under the authority of such a department⁵. As regards a person who is not a creditor or contributory, however much he may be interested, the liquidator is not even under such obligations as to allowing inspection as attach to the officers of a company before it is in liquidation⁶.

Where a person is entitled to see books or papers, the liquidator must not only give him access to them, but must give him every assistance and facility in finding out what relevant books and papers he requires, placing any information already obtained at his service. Nevertheless, he is not obliged, at the instance of every person interested in every question arising, to make such fresh and careful investigation of books and documents in his possession as would be necessary to enable him to make the ordinary list of documents required from a party ordered to give disclosure⁷.

1 See para 566 ante.

2 *Gooch's Case* (1872) 7 Ch App 207; *Re Movitex Ltd* [1990] BCLC 785, [1990] BCC 491.

3 See the Insolvency Act 1986 s 155(1); and para 1086 post. As to the making of applications see para 1055 et seq post.

4 For these purposes, references to a government department include references to any part of the Scottish administration: *ibid* s 155(3) (added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 85).

5 See the Insolvency Act 1986 s 155(2); and para 1086 post.

6 *Re Kent Coalfields Syndicate* [1898] 1 QB 754, CA.

7 *Gooch's Case* (1872) 7 Ch App 207.

UPDATE

438-938 Winding Up by the Court

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569 Liquidator's general duty

TEXT AND NOTES--See SI 1986/1925 r 4.49B (reports to creditors and members--winding up by the court), r 4.49E (creditors' and members' request for further information) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iii) Liquidator's Functions and Duties/570. Enforcement of duty to make returns etc.

570. Enforcement of duty to make returns etc.

If a liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court may, on the application¹ of any creditor or contributory of the company or the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order². The order may provide that all costs of and incidental to the application are to be borne by the liquidator³. Nothing in these provisions is to be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default⁴.

1 As to the making of applications see para 1055 et seq post.

2 Insolvency Act 1986 s 170(1), (2). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to proceedings where a liquidator in a voluntary liquidation is in default in delivering statements required by s 192 see para 1008 post.

3 Ibid s 170(3).

4 Ibid s 170(4). Section 170 also applies to a liquidator in a voluntary winding up: see para 1008 post.

UPDATE

438-938 Winding Up by the Court

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571. Control of liquidator by the court.

The court will not encourage a liquidator in resisting, especially on technical procedural grounds, claims to which there is manifestly no defence¹. It will insist that the liquidator, as its officer, acts fairly and honourably in dealing with persons who have claims adverse to his own, and does not merely stand on his rights at law or in equity². In general the liquidator will not be permitted to retain money paid under a mistake of law³ or under an agreement with the company which the company has failed to fulfil⁴, or to which in point of moral justice and honest dealing someone else has a superior claim⁵; but the liquidator must not be generous at the creditors' expense⁶.

The court may sanction the making of an immediate ex gratia payment by a liquidator to a person who has rendered special services in relation to the company's affairs⁷, even though that person has been held to be disentitled to prove for his services in the winding up⁸.

1 *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260, CA.

2 *Re Opera Ltd* [1891] 2 Ch 154 (revsd on other grounds [1891] 3 Ch 260, CA); *Re Regent Finance and Guarantee Corpn Ltd* [1930] WN 84, following *Re Condon, ex p James* (1874) 9 Ch App 609 (where the same principle was applied to a trustee in bankruptcy; see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 459) See also *Re Wyvern Developments Ltd* [1974] 2 All ER 535, [1974] 1 WLR 1097. The principle does not extend to a liquidator in a voluntary winding up because he is not an officer of the court: *Re TH Knitwear (Wholesale) Ltd* [1988] Ch 275, [1988] 1 All ER 860, CA (overruling *Re Temple Fire and Accident Assurance Co* (1910) 129 LT Jo 115 in this regard). As officers of the court, liquidators in a compulsory winding up are subject to the inherent jurisdiction of the court to control its officers: *Deloitte & Touche AG v Johnson* [2000] 1 BCLC 485, [1999] 4 LRC 281, PC. A person seeking to invoke the inherent jurisdiction must have a sufficient interest in the relief which he seeks: *Deloitte & Touche AG v Johnson* supra.

3 *Re Temple Fire and Accident Assurance Co* (1910) 129 LT Jo 115 (voluntary winding up); and see note 2 supra. Contrast *Re London County Commercial Reinsurance Office Ltd* [1922] 2 Ch 67 (claims under illegal insurance policies).

4 *Re Regent Finance and Guarantee Corpn Ltd* [1930] WN 84.

5 Cf *Re Tyler, ex p Official Receiver* [1907] 1 KB 865 at 869-870, 872, CA. As to the limits on the application of the doctrine see *Re Multi Guarantee Co Ltd* [1987] BCLC 257, CA. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 459.

6 *Re Regent's Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411 at 419, CA; *Re Opera Ltd* [1891] 2 Ch 154 (revsd on other grounds [1891] 3 Ch 260, CA); and see *Hand v Blow* [1901] 2 Ch 721, CA (where the court disallowed the claim for rent of the head landlord against a receiver appointed by the court at the instance of a mortgagee by sub-demise, who had been in possession). See further *Re JW Abbott & Co Ltd, Abbott v JW Abbott & Co Ltd* (1913) 30 TLR 13; *Re Westminster Motor Garage Co, Boyers v Westminster Garage Co* (1914) 84 LJ Ch 753.

7 *Re Banque des Marchands de Moscou (Koupetschesky)* [1953] 1 All ER 278, [1953] 1 WLR 172. This power may be used in a proper case to provide for the reasonable costs of a solicitor appointed without the necessary sanction: *Re Associated Travel Leisure and Services Ltd* [1978] 2 All ER 273, [1978] 1 WLR 547; but see now para 578 et seq post.

8 See *Re Banque des Marchands de Moscou (Koupetschesky), Wilenkin v Liquidator* [1952] 1 All ER 1269.

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438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iii) Liquidator's Functions and Duties/572. Control of liquidator by creditors etc.

572. Control of liquidator by creditors etc.

The liquidator of a company which is being wound up by the court in England and Wales may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution, either at the meeting appointing the liquidator¹ or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be². The liquidator may apply to the court for directions in relation to any particular matter arising in the winding up³. Subject to the provisions of the Insolvency Act 1986, he must use his own discretion in the management of the assets and their distribution among the creditors⁴. Any person aggrieved by his act or decision may apply to the court, which may confirm, reverse or modify the act or decision complained of and make such order in the case as it thinks just⁵.

1 See para 532 et seq ante.

2 Insolvency Act 1986 s 168(1), (2). As to the calling of meetings of creditors and contributories to ascertain their wishes see para 650 et seq post; as to the powers of creditors and contributories to requisition meetings and the procedure see para 652 et seq post; and as to the wishes of creditors and contributors in a winding up generally see para 480 ante. The court can override the duty where it is shown that the interests of justice require that no meeting be convened: *Re Barings plc (No 6)*, *Hamilton v Law Debenture Trustees Ltd* [2001] 2 BCLC 159; and see *Fielding v Seery* [2004] BCC 315.

3 Insolvency Act 1986 s 168(3). See further para 1012 post. As to the making of applications see para 1055 et seq post.

4 Ibid s 168(4).

5 Ibid s 168(5); and see para 1038 post. See further *Re ACLI Metals (London) Ltd* [1989] BCLC 749, 5 BCC 749; *Re Edenote Ltd, Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, CA; *Re Hans Place Ltd (in liquidation)* [1993] BCLC 768, [1992] BCC 737; *Hamilton v Official Receiver* [1998] BPIR 602. An outsider to the liquidation has no right to apply under the Insolvency Act 1986 s 168(5): *Re Edenote Ltd, Tottenham Hotspur plc v Ryman* supra; *Mahomed v Morris* [2000] 2 BCLC 536, CA. The jurisdiction under the Insolvency Act 1986 s 168(5) to set aside a concluded transaction was assumed in *Re Edenote Ltd, Tottenham Hotspur plc v Ryman* supra; but see *Mahomed v Morris* supra at 540 per Jacob J.

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438-938 Winding Up by the Court

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573. Liquidator's possession of assets.

When a winding-up order has been made, the liquidator must take into his custody or under his control all the property¹ and things in action to which the company is or appears to be entitled². Where the liquidator is appointed in succession to the official receiver acting as liquidator, the official receiver must, when the liquidator's appointment takes effect³, forthwith do all that is required for putting him into possession of the assets⁴.

1 As to the meaning of 'property' see para 489 note 8 ante. See also *Re Oasis Merchandising Services Ltd, Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA.

2 Insolvency Act 1986 s 144(1). As to the liquidator's powers to obtain books, papers or other records of the company over which a lien or other right to retain possession is claimed see s 246 (as amended); and para 676 post.

3 See para 557 et seq ante.

4 See the Insolvency Rules 1986, SI 1986/1925, r 4.107(1), (2); and para 537 ante. As to the official receiver see para 503 et seq ante.

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438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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574. Collection and application of assets by the liquidator.

As soon as may be after making a winding-up order, the court must cause the company's assets to be collected and applied in discharge of its liabilities¹. The duties thus imposed on the court must be discharged by the liquidator as an officer of the court, subject to its control². In the discharge of his duties, the liquidator, for the purposes of acquiring and retaining possession of the company's property, has the same powers as a receiver appointed by the High Court; and the court may, on his application, enforce such acquisition or retention accordingly³.

The court may in certain cases require property to which the company appears to be entitled to be delivered to the liquidator⁴.

1 Insolvency Act 1986 s 148(1).

2 Insolvency Rules 1986, SI 1986/1925, r 4.179(1).

3 Ibid r 4.179(2). The possession of a receiver appointed by the court is the possession of the court; and the court will not allow it to be disturbed without its own leave: *Angel v Smith* (1804) 9 Ves 335; *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332 at 350; *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104; and see RECEIVERS vol 39(2) (Reissue) para 395. Disturbance of a liquidator's possession is a contempt of court: *Re Henry Pound, Son and Hutchins* (1889) 42 ChD 402 at 441, CA; *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA. A receiver appointed by a debenture holder will need the leave of the court before taking possession of the charged assets from a liquidator, but such leave will be granted as a matter of course: *Re Potters Oils Ltd (No 2)* [1986] 1 All ER 890, sub nom *Re Potters Oils Ltd* [1986] 1 WLR 201.

4 See the Insolvency Act 1986 s 234(2); and para 675 post (where the liability and rights of a liquidator who has seized or disposed of any property which is not the property of the company are considered).

UPDATE

438-938 Winding Up by the Court

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574 Collection and application of assets by the liquidator

NOTE 1--Insolvency Act 1986 s 148(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iii) Liquidator's Functions and Duties/575. Vesting of company's property in liquidator.

575. Vesting of company's property in liquidator.

When a company is being wound up by the court, the court may, on the application¹ of the liquidator, by order direct that all or any part of the property² of whatsoever description belonging to the company or held by trustees on its behalf is to vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly³. The liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name⁴ any claim or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property⁵.

A vesting order vests the property in the liquidator only in his official capacity, so that he is not liable personally to burdens upon it, such as rentcharges⁶.

1 As to the making of applications see para 1055 et seq post.

2 As to the meaning of 'property' see para 489 note 8 ante.

3 Insolvency Act 1986 s 145(1). An assignment of an insurance policy by a liquidator in whom it has been so vested is an assignment by operation of law within the meaning of a provision prohibiting an assignment except in such event without the consent of the insurer: *Re Birkbeck Permanent Building Society* [1913] 2 Ch 34. It seems that a vesting order under this provision may be obtainable in the case of a dissolved company being wound up under the Insolvency Act 1986 s 221(5)(a) (see para 1151 post), so as to enable a liquidator to sue in his own name: *Russian and English Bank and Florence Montefiore Guedalla v Baring Bros & Co Ltd* [1936] AC 405 at 419, 435, 438, 443, [1936] 1 All ER 505 at 511, 520, 528, 530n, HL. See also *Re Fir View Furniture Co Ltd* (1971) Times, 9 February (vesting of factory in liquidator, followed by the grant of an injunction to prevent cutting off of electricity supply). As to continuation of supplies of electricity etc see now the Insolvency Act 1986 s 233 (as amended); and para 583 post.

4 See para 565 ante.

5 Insolvency Act 1986 s 145(2).

6 *Graham v Edge* (1888) 20 QBD 683, CA.

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576. Exchange of information.

The official receiver must give to the liquidator all such information relating to the affairs of the company and the course of the winding up as he, the official receiver, considers to be reasonably required for the effective discharge by the liquidator of his duties as such¹.

It is the duty of the liquidator of a company which is being wound up by the court in England and Wales, if he is not the official receiver:

- 1036 (1) to furnish the official receiver with such information²;
- 1037 (2) to produce to the official receiver and permit inspection by the official receiver of such books, papers and other records³; and
- 1038 (3) to give the official receiver such other assistance⁴,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up⁵.

Where the court appoints⁶ as the company's liquidator a person who was formerly its administrator or where a person is appointed as liquidator upon registration of a notice informing the registrar of companies that the company is moving from administration to creditors' voluntary liquidation⁷, and that person becomes aware of creditors not formerly known to him in his capacity as administrator, he must send to those creditors a copy of any statement or report sent by him as administrator to creditors⁸, so noted as to indicate that it is being sent under this provision⁹.

1 See the Insolvency Rules 1986, SI 1986/1925, r 4.107(7); and para 537 ante. As to the official receiver see para 503 et seq ante.

2 Insolvency Act 1986 s 143(2)(a).

3 Ibid s 143(2)(b).

4 Ibid s 143(2)(c).

5 Ibid s 143(2). As to the official receiver's functions in relation to the winding up see para 512 et seq ante.

6 Ie under ibid s 140 (as amended): see para 558 ante.

7 Ie a notice under ibid Sch B1 para 83(3) (as added) (see para 370 ante). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

8 Ie under the Insolvency Rules 1986, SI 1986/1925, r 2.33 (as substituted): see para 273 ante.

9 Ibid r 4.49A (added by SI 1987/1919; and amended by SI 2003/1730).

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(iv) Liquidator's Powers

577. Liquidator's powers exercisable without sanction.

In any winding up by the court the liquidator has, without the sanction of either the court or the liquidation committee¹, the following powers²:

- 1039 (1) to sell³ any of the company's property⁴ by public auction or private contract, with power to transfer the whole of it to any person, or to sell the same in parcels⁵;
- 1040 (2) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal⁶;
- 1041 (3) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory⁷ for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors⁸;
- 1042 (4) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business⁹;
- 1043 (5) to raise any requisite money on the security of the company's assets¹⁰;
- 1044 (6) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate, which cannot conveniently be done in the name of the company¹¹;
- 1045 (7) to appoint an agent to do any business which the liquidator is unable to do himself¹²; and
- 1046 (8) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets¹³ (other than surplus assets to be distributed among the persons entitled to them¹⁴), except the things which by statute require the sanction of the court or of the liquidation committee¹⁵.

1 As to the liquidation committee see para 629 et seq post.

2 Insolvency Act 1986 s 167(1)(b).

3 A transfer of a cause of action in return for financing a claim and a share of the recoveries is a 'sale' for these purposes: *Weddell v JA Pearce & Major* [1988] Ch 26, [1987] 3 All ER 624; *Groveswood Holdings plc v James Capel & Co Ltd* [1995] Ch 80, [1994] 4 All ER 417. Cf *Re Oasis Merchandising Services Ltd*, *Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA, where the decision in *Groveswood Holdings plc v James Capel & Co Ltd* supra was doubted; and see *ANC Ltd v Clark Goldring & Page Ltd* [2001] BCC 479, [2001] BPIR 568; *Farmer v Moseley (Holdings) Ltd* [2002] BPIR 473. See also *Re Edennote Ltd*, *Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, CA. The liquidator's decision whether or not to assign a cause of action may be challenged under the Insolvency Act 1986 s 168(5) (see para 572 ante): see *Hamilton v Official Receiver* [1998] BPIR 602; and paras 572 ante, 1038 post. A liquidator was able to assign a cause of action to an assignee where the object and effect of the assignment was to enable the assignee to obtain legal aid to which the liquidator and the company

in liquidation were not entitled: see *Norglen Ltd (in liquidation) v Reeds Rains Prudential Ltd* [1999] 2 AC 1, [1998] 1 All ER 218, HL.

4 As to the meaning of 'property' see para 489 note 8 ante. See also *Swift v Dairywise Farms Ltd* [2001] EWCA Civ 145, [2003] 2 All ER 304n (sale of milk quota held on trust). This provision does not empower the liquidator to sell non-assignable property: *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014 at 1033, HL, per Lord Atkin. As to a sale by the liquidator of goods in which the property has not passed to the company see *Re Anchor Line (Henderson Bros) Ltd* [1937] Ch 1, [1936] 2 All ER 941, CA. Cf para 675 post. As to the assignment of a lease without the landlord's consent see para 587 post.

5 Insolvency Act 1986 s 167, Sch 4 para 6. As to realisation of property see further para 744 et seq post.

6 Ibid Sch 4 para 7.

7 For the meaning of 'contributory' see para 703 post.

8 Insolvency Act 1986 Sch 4 para 8. As to set-off in the case of a contributory's bankruptcy or insolvency see para 738 post.

9 Ibid Sch 4 para 9. See *Smith Fleming & Co's Case*, *Gledstones & Co's Case* (1866) 1 Ch App 538; *Re Contract Corpn, Ebbw Vale Co's Claims* (1869) LR 8 Eq 14.

10 Insolvency Act 1986 Sch 4 para 10. The power to raise and secure money cannot be exercised to the prejudice of debenture holders: *Re Regent's Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411, CA.

11 Insolvency Act 1986 Sch 4 para 11. For the purpose of enabling the liquidator to take out the letters of administration or to recover the money, the money due is deemed to be due to the liquidator himself: Sch 4 para 11.

12 Ibid Sch 4 para 12. This includes the employment of a solicitor: see para 582 post.

13 Ibid Sch 4 para 13.

14 The liquidator is not entitled to distribute surplus assets without an order of the court because ibid s 154 (and not s 167(1)(b), Sch 4 para 13) is the applicable enactment: *Re Phoenix Oil and Transport Co Ltd (No 2)* [1958] Ch 565, [1958] 1 All ER 158. As to their distribution under the Insolvency Act 1986 s 154 see para 831 et seq post.

15 See para 578 post.

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578. Liquidator's powers exercisable with sanction.

In a winding up by the court, the liquidator with the sanction either of the court¹ or of the liquidation committee², has the following powers³:

- 1047 (1) to bring or defend any claim or other legal proceeding in the name and on behalf of the company⁴;
 - 1048 (2) to carry on the business of the company, so far as may be necessary for its beneficial winding up⁵;
 - 1049 (3) to pay any classes of creditors in full⁶;
 - 1050 (4) to make any compromise or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable⁷;
 - 1051 (5) to compromise, on such terms as may be agreed:
- 7 (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company⁸; and
 - 8 (b) all questions in any way relating to or affecting the assets or the winding up of the company⁹,
- 8 1052 and to take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect of it¹⁰; and
 - 1053 (6) to bring legal proceedings under the provisions relating to fraudulent trading¹¹, wrongful trading¹², transactions at an undervalue¹³, preferences¹⁴ and transactions defrauding creditors¹⁵.

Any permission given by the liquidation committee or the court¹⁶ must not be a general permission but must relate to a particular proposed exercise of the liquidator's power in question; and a person dealing with the liquidator in good faith and for value is not concerned to inquire whether any such permission has been given¹⁷. Where the liquidator has done anything without that permission, the court or the liquidation committee may, for the purpose of enabling him to meet his expenses out of the assets, ratify what he has done; but neither must do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay¹⁸.

1 As to the making of applications see para 1055 et seq post.

2 As to the liquidation committee see para 629 et seq post.

3 Insolvency Act 1986 s 167(1)(a).

4 Ibid s 167, Sch 4 para 4. This provision enables the liquidator to sue in the name of a dissolved company which is being wound up under s 221(5)(a) (see para 1151 post): *Russian and English Bank and Florence*

Montefiore Guedalla v Baring Bros & Co Ltd [1936] AC 405, [1936] 1 All ER 505, HL. See further para 581 post. As to the costs of outside litigation see para 594 post.

5 Insolvency Act 1986 Sch 4 para 5; and see para 747 post. As to the continuation of the long-term business of an insurance company in liquidation see the Financial Services and Markets Act 2000 s 376; and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) para 505.

6 Insolvency Act 1986 Sch 4 para 1. Where it is desired to distribute assets otherwise than in strict accordance with the creditors' rights, an application under this provision is normally not the proper procedure: *Re Trix Ltd, Re Ewart Holdings Ltd* [1970] 3 All ER 397, [1970] 1 WLR 1421; cf *Re Bank of Credit and Commerce International SA (No 3)* [1993] BCLC 1490, sub nom *Re Bank of Credit and Commerce International SA (No 2)* [1992] BCC 715, CA. The preferred method of procedure is by a scheme of arrangement under the Companies Act 1985 s 425 (as amended): *Re Trix Ltd, Re Ewart Holdings Ltd* supra. However, where it is not practicable to hold meetings of creditors as required by the Companies Act 1985 s 425 (as amended), the liquidator may exercise his powers under the Insolvency Act 1986 Sch 4 Pt I (paras 1-3) rather than proceed by a scheme of arrangement and it is permissible to depart from the pari passu principle of distribution where this is ancillary to the exercise of such powers: *Re Bank of Credit and Commerce International SA (No 3)* supra; *Taylor v Morris* [1993] BCLC 1343, [1992] BCC 440, Ct of Sess. The power to pay any classes of creditors in full may apply to the payment in full of creditors owed very small amounts: *Re Bank of Credit and Commerce International SA (No 3)* supra; *Taylor v Morris* supra. The power may extend to payment of classes of creditors where such payment is beneficial to the winding up of the company in that the collection and distribution of the company's assets for the general benefit of its creditors will be, or are likely to be, thereby facilitated, eg where a liquidator runs the business as a going concern necessitating the payment in full of certain classes of essential trade creditors: *Re Walker Hare Pty Ltd (in liquidation)* [1968] VR 447, Vict SC.

7 Insolvency Act 1986 Sch 4 para 2.

8 Ibid Sch 4 para 3(a).

9 Ibid Sch 4 para 3(b).

10 Ibid Sch 4 para 3. On application by the liquidator for sanction of a compromise, in the ordinary case where the liquidator is not suggested to have acted in bad faith or been partisan, the court will attach considerable weight to the liquidator's views: *Re Edenote Ltd (No 2)* [1997] 2 BCLC 89, CA; *Re Greenhaven Motors Ltd (in liquidation)* [1999] 1 BCLC 635, [1999] BCC 463, CA.

11 Ie the Insolvency Act 1986 s 213 (see para 911 post).

12 See note 11 supra.

13 Ie the Insolvency Act 1986 s 238 (as amended) (see paras 844, 847 post).

14 Ie ibid s 239 (see para 846 et seq post).

15 Ibid Sch 4 para 3A (added by the Enterprise Act 2002 s 253). The addition of this provision does not apply in relation to any such proceedings which were commenced before 15 September 2003: see the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 5. Legal proceedings under the provisions relating to transactions defrauding creditors are brought under the Insolvency Act 1986 s 423 (see para 854 post).

16 Ie under ibid s 167(1)(a) or the Insolvency Rules 1986, SI 1986/1925 (as amended). Where a liquidator intends to compromise a claim, he should apply for court sanction under the Insolvency Act 1986 s 167(1); it is not for a creditor or contributory to apply under s 167(3) (see para 580 post): *Re Greenhaven Motors Ltd (in liquidation)* [1999] 1 BCLC 635, [1999] BCC 463, CA. On such an application, any person claiming bona fide to be a creditor or contributory is entitled to be heard and it is a matter for the court as to the weight to be given to their views: *Re Greenhaven Motors Ltd (in liquidation)* supra. In deciding whether to sanction a compromise, the court must consider whether the interests of those, whether creditors or contributories, who have a real interest in the assets of the company are likely to be best served by permitting or not permitting the company to enter into the compromise; it is not for the court to speculate on whether a better compromise might have been achieved: *Re Greenhaven Motors Ltd (in liquidation)* supra; *Re Barings Plc (No 7) (in liquidation)* [2002] 1 BCLC 401 (where the objection of preference shareholders who had no real interest in the compromise was discounted).

17 Insolvency Rules 1986, SI 1986/1925, r 4.184(1).

18 Ibid r 4.184(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

578 Liquidator's powers exercisable with sanction

TEXT AND NOTE 16--After 'liquidation committee' read 'or if there is no such committee, a meeting of the company's creditors': SI 1986/1925 r 4.184(1) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/579. Notice to liquidation committee of exercise of certain powers.

579. Notice to liquidation committee of exercise of certain powers.

Where the liquidator, not being the official receiver, in exercise of his powers¹, disposes of any property² of the company to a person who is connected with the company³ or employs a solicitor⁴ to assist him in the carrying out of his functions, he must, if there is for the time being a liquidation committee established⁵, give notice to the committee of that exercise of his powers⁶.

1 He the powers conferred on him by the Insolvency Act 1986. As to the official receiver see para 503 et seq ante.

2 As to the meaning of 'property' see para 489 note 8 ante.

3 For the meaning of 'connected' with a company see para 5 ante.

4 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1. As to the employment of a solicitor by the liquidator see para 582 post.

5 As to the liquidation committee see para 629 et seq post.

6 Insolvency Act 1986 s 167(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

579 Notice to liquidation committee of exercise of certain powers

NOTE 4--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/580. Control of liquidator by the court.

580. Control of liquidator by the court.

The exercise by the liquidator of the powers exercisable with or without sanction of the court or the liquidation committee¹ is subject to the court's control, and any creditor or contributory² may apply to the court with respect to any exercise or proposed exercise of any of those powers³. The court will not interfere with a sale by a liquidator unless he is acting in a manner in which no reasonable liquidator could act or unless he is acting fraudulently or is not exercising his discretion bona fide⁴.

1 As to the powers exercisable with sanction see para 578 ante; and as to the powers exercisable without sanction see para 577 ante.

2 For the meaning of 'contributory' see para 703 post.

3 Insolvency Act 1986 s 167(3). As to the making of applications see para 1055 et seq post.

4 *Leon v York-O-Matic Ltd* [1966] 3 All ER 277, [1966] 1 WLR 1450; *Harold M Pitman & Co v Top Business Systems (Nottingham) Ltd* [1984] BCLC 593; *Re Edenote Ltd, Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, CA; *Mitchell v Buckingham International plc (in liquidation)* [1998] 2 BCLC 369; *Re Greenhaven Motors Ltd (in liquidation)* [1999] 1 BCLC 635; and see para 1038 post. As to the analogous principle applied in bankruptcy see *Re a Debtor, ex p the Debtor v Dodwell (Trustee)* [1949] Ch 236, [1949] 1 All ER 510; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 344.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/581. Litigation by liquidator.

581. Litigation by liquidator.

The sanction to bring legal proceedings¹ should be obtained before they are begun, although there is power to give the sanction subsequently². A third party has no right, however, to object to the proceedings brought by a liquidator in the company's name without the sanction of the court³.

A liquidator may validly adopt proceedings irregularly commenced in the company's name before the liquidation⁴. The court may give leave for proceedings to be begun in the name of the company, or of the liquidator or of the official receiver, by creditors or contributories⁵, but not by other persons⁶. As a term of giving leave to begin the proceedings, the court usually requires an indemnity against the costs from the person obtaining leave⁷; and no proceedings may be begun until the indemnity is completed⁸. A liquidator or official receiver should not allow his name to be added without an indemnity, and then only in a clear case⁹.

Without obtaining the sanction of either the court or the liquidation committee, a liquidator may bring or defend proceedings in the winding up¹⁰.

1 See para 578 ante.

2 See para 578 ante. Cf *Re London Metallurgical Co* [1897] 2 Ch 262 (an order in a debenture holders' claim and winding up that the liquidator is the proper person to call up uncalled capital and that he takes all necessary proceedings for enforcing the call does not authorise the liquidator to take proceedings in any particular form which he may select without further sanction).

3 *Dublin City Distillery Ltd v Doherty* [1914] AC 823, HL. See also para 2338 text to note 10 ante.

4 *Danish Mercantile Co Ltd v Beaumont* [1951] Ch 680, [1951] 1 All ER 925, CA; *Alexander Ward & Co Ltd v Samyang Navigation Co Ltd* [1975] 2 All ER 424, [1975] 1 WLR 673, HL.

5 *Re Bank of Gibraltar and Malta* (1865) 1 Ch App 69; *Re Imperial Bank of China, India and Japan* (1866) 1 Ch App 339.

6 *Cape Breton Co v Fenn* (1881) 17 ChD 198, CA; *Re Cape Breton Co* (1881) 19 ChD 77, CA.

7 See the cases cited in notes 3, 5 supra.

8 *Cape Breton Co v Fenn* (1881) 17 ChD 198, CA.

9 *Re Anglo-Sardinian Antimony Co* (1894) 38 Sol Jo 682; *Practice Note* [1894] WN 166; *Re New Zealand Loan and Mercantile Agency Co Ltd* (1894) 71 LT 693. The liquidator should obtain an opinion of counsel: see *Practice Note* supra.

10 *Re Silver Valley Mines* (1882) 21 ChD 381 at 387, CA. This probably includes the service of a statutory demand in bankruptcy; but such demand, if served by the liquidator, and any subsequent bankruptcy petition presented by him, must be made out in the name of the company and not in the name of the liquidator. See the following cases decided under the Bankruptcy Act 1914 (now repealed): *Re Winterbottom, ex p Winterbottom* (1886) 18 QBD 446; *Re Shirley, ex p Mackay* (1887) 58 LT 237; *Re Bassett, ex p Lewis* (1895) 43 WR 427; *Re A Debtor (No 41 of 1951), ex p Debtor v Hunter (Liquidator of Marvel Paper Products Ltd)* [1952] Ch 192, [1952] 1 All ER 107; cf *Re Nance, ex p Ashmead* [1893] 1 QB 590, CA; and see *Re Murrieta, ex p South American and Mexican Co* (1896) 12 TLR 238. As to statutory demands in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 154 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

581 Litigation by liquidator

NOTE 2--See also *Gresham International Ltd v Moonie* [2009] EWHC 1093 (Ch), [2010] 2 WLR 362, [2009] 2 BCLC 256.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/582. Employment of solicitor by liquidator.

582. Employment of solicitor by liquidator.

The liquidator does not need express sanction to employ a solicitor, but he must give notice to the liquidation committee¹, if there is one established for the time being, if he does so². The solicitor acting for the liquidator in a winding up has no claim against the liquidator personally for the costs, even though the liquidator has obtained an order that the costs are to be taxed and paid by him to the solicitor³. Where the attendance of the solicitor⁴ is required in any proceedings whether in court or in chambers, the liquidator need not attend unless directed by the court⁵. The solicitor's retainer is not revoked by the removal of the liquidator who retained him⁶. If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs must not be paid unless this is authorised by the liquidation committee, the creditors or the court⁷.

It is generally acceptable for a firm of solicitors which has acted for the petitioning creditor on a winding-up petition to be retained by the liquidator when the company has been wound up⁸.

1 As to the liquidation committee see para 629 et seq post.

2 See paras 577, 579 ante.

3 *Re Anglo-Moravian Hungarian Junction Rly Co, ex p Watkin* (1875) 1 ChD 130, CA. As to the solicitor's lien see COMPANIES vol 14 (2009) PARA 611.

4 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

5 See the Insolvency Rules 1986, SI 1986/1925, r 7.54; and para 1063 post.

6 *R v Lord Mayor of London, ex p Boaler* [1893] 2 QB 146.

7 Insolvency Rules 1986, SI 1986/1925, r 4.128(3).

8 *Re Schuppan (a bankrupt)* [1996] 2 All ER 664, [1997] 1 BCLC 211. It may also be acceptable to use a second set of solicitors in circumstances where particular conflicts of interest arise: *Re Schuppan (a bankrupt)* supra; cf *Re Polly Peck International plc* [1991] BCC 503; *Re Maxwell Communication Corpn plc* [1992] BCLC 465, [1992] BCC 372; *Re Baron Investments (Holdings) Ltd (in liquidation)*, *Halstuk v Venvil* [2000] 1 BCLC 272 (where the court is concerned with potential conflicts, it is necessary to take a pragmatic approach); *Re Recover Ltd (in liquidation)*, *Hornan v Latif Group SL* [2003] EWHC 526 (Ch), [1993] 2 BCLC 186 (a solicitor whose firm is a creditor of the company in liquidation cannot act for the liquidator in respect of the admission or rejection of proofs of debt).

UPDATE

438-938 Winding Up by the Court

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582 Employment of solicitor by liquidator

NOTE 4--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

NOTE 5--SI 1986/1925 r 7.54 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/583. Power to ensure continuation of essential supplies by utilities.

583. Power to ensure continuation of essential supplies by utilities.

Where a company goes into liquidation or a provisional liquidator is appointed and, if a request is made by or with the concurrence of the liquidator or provisional liquidator for the giving after the effective date¹ of:

- 1054 (1) a supply of gas by a gas supplier²;
- 1055 (2) a supply of electricity by an electricity supplier³;
- 1056 (3) a supply of water by a water undertaker⁴; or
- 1057 (4) a supply of communications services⁵ by a provider of a public electronic communications service⁶,

the supplier:

- 1058 (a) may make it a condition of the giving of the supply that the liquidator or provisional liquidator personally guarantees the payment of any charges in respect of that supply⁷; but
- 1059 (b) must not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid⁸.

No such power to ensure the continuation of supplies by a trader, other than the utilities described above, exists, subject to the terms of the underlying supply contract⁹.

1 For these purposes, 'the effective date' is the date on which the company went into liquidation or the date on which the provisional liquidator was appointed: Insolvency Act 1986 s 233(1)(d), (e), (4)(d), (e). Section s 233 (as amended) is also modified in its application to insolvency proceedings involving limited liability partnerships: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Insolvency Act 1986 s 233(3)(a) (substituted by the Gas Act 1995 s 16(1), Sch 4 para 14(1)).

3 Insolvency Act 1986 s 233(3)(b) (substituted by the Utilities Act 2000 s 108, Sch 6 para 47(1), (2)(a)).

4 Insolvency Act 1986 s 233(3)(c) (amended by the Water Act 1989 s 190(1), Sch 25 para 78(1)).

5 'Communications services' do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003: see TELECOMMUNICATIONS vol 97 (2010) PARA 60); Insolvency Act 1986 s 233(5)(d) (substituted by the Communications Act 2003 s 406(1), Sch 17 para 82(1), (2)(b)).

6 Insolvency Act 1986 s 233(3)(d) (substituted by the Communications Act 2003 Sch 17 para 82(1), (2)(a)).

7 Insolvency Act 1986 s 233(2)(a).

8 Ibid s 233(2)(b).

9 See *Leyland DAF Ltd v Automotive Products Ltd* [1994] 1 BCLC 245 at 250, [1993] BCC 389 at 392 per Nicholls V-C (supply of components).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/584. Compromises and arrangements by liquidator.

584. Compromises and arrangements by liquidator.

The court has no jurisdiction to compel a liquidator to consent to a compromise or arrangement with a creditor or contributory¹. Any creditor or contributory may appear either to support or to oppose an application for the court's sanction to a compromise or arrangement². If the sanction is obtained by misrepresentation, it will be rescinded³.

Before sanctioning a compromise or arrangement, the court must be satisfied as to the facts on which it is based⁴.

1 *Pearson's Case* (1872) 7 Ch App 309; *Re International Contract Co, Hankey's Case* (1872) 41 LJ Ch 385. As to the necessity for sanction to a compromise or arrangement see para 578 ante. As to the statutory power to sanction compromises and arrangements between a company and its creditors or classes of creditors see the Companies Act 1985 s 425 (as amended (now repealed)); and *Re Bank of Credit and Commerce International SA (No 3)* [1993] BCLC 1490, sub nom *Re Bank of Credit and Commerce International SA (No 2)* [1992] BCC 715 at 720, CA. See also COMPANIES vol 15 (2009) PARA 1426.

2 See the Insolvency Rules 1986, SI 1986/1925, r 7.53; and para 1062 post.

3 *Re Leeds Banking Co, ex p Clarke* (1866) 12 Jur NS 780. A compromise may be set aside if the shareholders have not had sufficient notice of its terms: see *Re Central Darjeeling Tea Co Ltd* (1866) 15 LT 234.

4 *Re Northumberland and Durham District Banking Co, ex p Totty* (1860) 1 Drew & Sm 273.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/585. Compromises with contributories.

585. Compromises with contributories.

A general compromise of claims upon contributories as a class may be sanctioned¹, but not so as to be binding on an unwilling minority². A compromise with individual contributories on the 'A' list does not release contributories on the 'B' list³ or affect the liability of other contributories on the 'A' list⁴.

A power to compromise rights presupposes some dispute about them or difficulties in enforcing them⁵. A compromise is good, however, if the parties in good faith believe that there is a question to be decided between them, even though it ultimately turns out that there was no doubt upon the point in dispute⁶. When many years have elapsed since a contributory was discharged from further liability by compromise with a liquidator, every presumption is made in favour of the discharge⁷.

1 *Bank of Hindustan, China and Japan v Eastern Financial Association* (1869) 13 Moo Ind App 15, PC; *Re Smith Knight & Co* (1868) 37 LJ Ch 864; and see *Re Commercial Bank Corp'n of India and the East* (1869) LR 8 Eq 241.

2 *Re Albert Life Assurance Co* (1871) 6 Ch App 381. Cf the statutory power to sanction compromises approved by a three-fourths majority conferred by the Companies Act 1985 s 425 (as amended (now repealed)). See also COMPANIES vol 15 (2009) PARA 1426.

3 *Re Accidental Death Insurance Co* (1878) 7 ChD 568; *Roberts v Crowe* (1872) LR 7 CP 629. As to the 'A' and 'B' lists of contributories see para 722 post.

4 *Helbert v Banner, Re Bamed's Bank* (1871) LR 5 HL 28; *Hudson's Case* (1871) LR 12 Eq 1; *Nevill's Case* (1870) 6 Ch App 43.

5 *Mercantile Investment and General Trust Co v International Co of Mexico* [1893] 1 Ch 484n at 489n, CA; *Sneath v Valley Gold Ltd* [1893] 1 Ch 477 at 494, CA. These cases were decided on the construction of the word 'compromise' contained in provisions of trust deeds for securing debentures, under which a specified number of debenture holders were given power to modify or compromise the debenture holders' rights.

6 *Lucy's Case* (1853) 4 De GM & G 356.

7 *Watt v Assets Co* [1905] AC 317, HL.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/586. Voluntary arrangements.

586. Voluntary arrangements.

The liquidator may make a proposal to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, being a proposal which provides for some person who is qualified to act as an insolvency practitioner¹ in relation to the company to act in relation to the composition or scheme either as trustee or otherwise for the purpose of supervising its implementation².

1 As to insolvency practitioners and their qualification see para 8 et seq ante.

2 See the Insolvency Act 1986 s 1(3)(b). As to voluntary arrangements generally see Pt I (ss 1-7B) (as amended); and para 71 et seq ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/587. Assignment of lease.

587. Assignment of lease.

Where leaseholds are held by the company subject to a covenant against assignment without the landlord's consent, and no vesting order¹ has been made in favour of the liquidator, the liquidator cannot assign without that consent². Where a vesting order has been made, the liquidator will, it seems, be precluded from assigning without consent only if the covenant is so expressed as to bind a person, such as a liquidator in whose favour a vesting order has been made, in whom the property vests by operation of law³.

1 See para 575 ante.

2 *Re Farrow's Bank Ltd* [1921] 2 Ch 164, CA; *Cohen v Popular Restaurants Ltd* [1917] 1 KB 480.

3 Cf *Re Birkbeck Permanent Benefit Building Society* [1913] 2 Ch 34 at 38. In bankruptcy, where the bankrupt's property vests by operation of law in the trustee in bankruptcy upon his appointment taking effect, it has been held that the trustee may assign free from the bankrupt's covenant, if the covenant is expressed to bind the bankrupt's 'assigns' only, but not if it is expressed to include 'his successors in title': see *Re Wright, ex p Landau v Trustee* [1949] Ch 729, [1949] 2 All ER 605; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 414. As to a landlord's consent to assignment generally see LANDLORD AND TENANT vol 27(1) (2006 Reissue) para 485 et seq.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(iv) Liquidator's Powers/588. Rules governing exercise of liquidator's powers.

588. Rules governing exercise of liquidator's powers.

General rules have been made under statutory powers¹ for enabling or requiring the liquidator as an officer of the court and subject to the control of the court to exercise or perform all or any of the powers and duties conferred and imposed on the court in respect of the following matters:

- 1060 (1) holding and conducting meetings to ascertain the wishes of creditors and contributories²;
- 1061 (2) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets³;
- 1062 (3) paying, delivering, conveying, surrendering or transferring money, property, books or papers to the liquidator⁴;
- 1063 (4) making calls⁵; and
- 1064 (5) fixing a time within which debts and claims must be proved⁶.

The liquidator may not rectify the register of members without special leave of the court, or make any call without the special leave of the court or the sanction of the liquidation committee⁷. If the liquidation committee refuses sanction to make a call, leave may be granted by the court⁸.

1 *Ie the Insolvency Act 1986 s 160(1).*

2 *See ibid s 160(1)(a); and para 650 et seq post.*

3 *See ibid s 160(1)(b); and paras 721, 727 post. There is no power to rectify the register of members under s 160(1)(b) in the case of a winding up in relation to a limited liability partnership: see s 160(1)(b); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.*

4 *See the Insolvency Act 1986 s 160(1)(c); and paras 675, 741 post.*

5 *See ibid s 160(1)(d); and para 734 post.*

6 *See ibid s 160(1)(e); and para 776 post.*

7 *See ibid s 160(2); and paras 727, 735 post. In the case of a winding up in relation to a limited liability partnership, the liquidator may not make any call without the special leave of the court or the sanction of the liquidation committee; but there is no power to rectify the register: see s 160(2); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.*

8 *Re North Eastern Insurance Co Ltd (1915) 85 LJ Ch 751. As to the making of applications see para 1055 et seq post.*

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

588 Rules governing exercise of liquidator's powers

NOTES 1-6--Insolvency Act 1986 s 160(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/ (v) Liquidator's Remuneration and Costs/589. Liquidator's remuneration.

(v) Liquidator's Remuneration and Costs

589. Liquidator's remuneration.

The liquidator is entitled to receive remuneration for his services as such¹. The remuneration must be fixed either:

- 1065 (1) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination²; or
- 1066 (2) by reference to the time properly given by the insolvency practitioner, as liquidator, and his staff in attending to matters arising in the winding up³.

Where the liquidator is other than the official receiver, it is for the liquidation committee⁴, if there is one, to determine by which of these measures remuneration is to be fixed and, if remuneration is to be fixed as a percentage of the value of the realised and/or distributed assets, to determine any percentage to be applied⁵. If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed⁶ by a resolution of a meeting of creditors⁷.

In arriving at that determination, the liquidation committee or the creditors, as the case may be, must have regard to:

- 1067 (a) the complexity, or otherwise, of the case⁸;
- 1068 (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner, as liquidator, any responsibility of an exceptional kind or degree⁹;
- 1069 (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator¹⁰; and
- 1070 (d) the value and nature of the assets with which the liquidator has to deal¹¹.

Where the liquidator is not the official receiver and his remuneration is not fixed in accordance with these provisions, the liquidator is entitled by way of remuneration for his services as such to such sum as may be arrived at by first applying the relevant realisation scale¹² to the monies received by him from the realisation of the assets of the company¹³, and then by adding to that sum such sum as is arrived at by applying the relevant distribution scale¹⁴ to the value of the assets distributed to creditors of the company¹⁵ and to contributories¹⁶.

The liquidator may request or apply to the court for an increase in his remuneration where he considers it to be insufficient¹⁷.

1 Insolvent Rules 1986, SI 1986/1925, r 4.127(1). As to the remuneration of the official receiver when he acts as liquidator see para 548 ante. As to the position where a winding-up order is discharged, and as to the liquidator's rights against secured creditors, see para 593 post. As to the general order of priority in which the remuneration is payable see r 4.218 (as amended); and para 810 post.

2 Ibid r 4.127(2)(a).

3 Ibid r 4.127(2)(b).

4 As to the liquidation committee see para 629 et seq post.

5 Insolvency Rules 1986, SI 1986/1925, r 4.127(3).

6 Ie in accordance with ibid r 4.127(2): see the text and notes 2-3 supra.

7 Ibid r 4.127(5). As to the procedure at meetings of creditors see para 650 et seq post.

8 Ibid r 4.127(4)(a), (5).

9 Ibid r 4.127(4)(b), (5).

10 Ibid r 4.127(4)(c), (5).

11 Ibid r 4.127(4)(d), (5).

12 Ie the realisation scale set out in ibid Sch 6 (as added). The realisation scale is: (1) on the first £5,000 or fraction thereof, 20%; (2) on the next £5,000 or fraction thereof, 15%; (3) on the next £90,000 or fraction thereof, 10%; and (4) on all further sums realised, 5%: Sch 6 (added by SI 2004/584).

13 Insolvency Rules 1986, SI 1986/1925, rr 4.127(6), 4.127A(1), (2)(a) (r 4.127(6) substituted, and r 4.127A added, by SI 2004/584). The amendments made to these provisions do not apply where, before 1 April 2004, a winding-up order is made or a resolution for the winding-up of the company is passed and the liquidator is entitled to remuneration, in which circumstances it is instead provided that if the liquidator's remuneration is not fixed as set out in the Insolvency Rules 1986, SI 1986/1925, r 4.127(1)-(5) (see the text and notes 1-11 supra), it must be in accordance with the scale laid down for the official receiver under general regulations (see para 548 ante): Insolvency Rules 1986, SI 1986/1925, r 4.127(6) (as originally enacted); Insolvency (Amendment) Rules 2004, SI 2004/584, rr 1(2), 3(1)(a), (2)(a).

For these purposes, the monies received by the liquidator from the realisation of the company's assets include any value added tax thereon, but sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company are deducted: Insolvency Rules 1986, SI 1986/1925, r 4.127A(2)(a) (as so added).

14 Ie the distribution scale set out in ibid Sch 6 (as added). The distribution scale is: (1) on the first £5,000 or fraction thereof, 10%; (2) on the next £5,000 or fraction thereof, 7.5%; (3) on the next £90,000 or fraction thereof, 5%; and (4) on all further sums realised, 2.5%: Sch 6 (as added: see note 12 supra).

15 The value of the assets distributed to creditors includes payments made in respect of preferential debts: ibid r 4.127A(2)(b) (as added: see note 13 supra).

16 Ibid r 4.127A(2)(b) (as added: see note 13 supra).

17 See ibid r 4.130 (as amended); and para 591 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

589 Liquidator's remuneration

TEXT AND NOTES 4-12--SI 1986/1925 r 4.127(3) substituted by r 4.127(3A)-(3C); r 4.127(5A), (7-CVL) added: SI 2010/686.

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590. Other matters affecting remuneration.

Where the liquidator is not the official receiver and sells on behalf of a secured creditor¹ assets subject to a charge which when created was a mortgage or a fixed charge, the liquidator is entitled to such sum as is arrived at by applying the relevant realisation scale² to the monies received by him in respect of the assets realised³. Where the liquidator is not the official receiver⁴ and sells on behalf of a secured creditor assets subject to a charge which when created was a floating charge, the liquidator is entitled to such sum by way of remuneration as is arrived at by first applying the relevant realisation scale⁴ to monies received by him from the realisation of those assets⁵, and then by adding to that sum such sum as is arrived at by applying the relevant distribution scale⁶ to the value of the assets distributed to the holder of the charge⁷.

Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned; and any dispute arising between them may be referred to the court, for settlement by order, or to the liquidation committee⁸ or a meeting of creditors, for settlement by resolution⁹. If the liquidator is a solicitor¹⁰ and employs his own firm, or any partner in it, to act on behalf of the company, profit costs must not be paid unless this is authorised by the liquidation committee, the creditors or the court¹¹. Where there has been improper solicitation by or on behalf of the liquidator in obtaining proxies or procuring his appointment, the court may disallow remuneration to the liquidator¹².

It is questionable whether, as with remuneration calculated by reference to the value of the realised assets or to the professional time committed to the winding up¹³, the liquidator is entitled to request or apply to the court for an increase in his remuneration where he considers it to be insufficient¹⁴.

1 For the meaning of 'secured creditor' see para 109 note 10 ante.

2 I.e. the realisation scale set out in the Insolvency Rules 1986, SI 1986/1925, Sch 6 (as added): see para 589 note 12 ante.

3 Ibid r 4.127B(1), (2)(a) (r 4.127B added by SI 2004/584). The addition of this provision does not apply where, before 1 April 2004, a winding-up order is made or a resolution for the winding-up of the company is passed, in which circumstances it is instead provided that where the liquidator sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to that which is chargeable in corresponding circumstances by the official receiver under general regulations (see para 548 ante): Insolvency Rules 1986, SI 1986/1925, r 4.128(1) (as originally enacted); Insolvency (Amendment) Rules 2004, SI 2004/584, rr 1(2), 3(1)(a), (2)(a).

For these purposes, the monies received by the liquidator from the realisation of the company's assets include any sums received in respect of value added tax thereon, but sums spent out of money received in carrying on the business of the company are deducted: Insolvency Rules 1986, SI 1986/1925, r 4.127B(2)(a) (as so added).

4 As to the official receiver see para 503 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.127B(1), (3)(a) (as added: see note 3 supra). For these purposes, the monies received by the liquidator from the realisation of the company's assets include any sums received in respect of value added tax thereon, but sums received which are spent in carrying on the business of the company are ignored: r 4.127B(3)(a) (as so added).

6 I.e. the distribution scale set out in ibid Sch 6 (as added): see para 589 note 14 ante.

7 Ibid r 4.127B(3)(b) (as added: see note 3 supra).

8 As to the liquidation committee see para 629 et seq post.

9 Insolvency Rules 1986, SI 1986/1925, r 4.128(2).

10 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

11 Insolvency Rules 1986, SI 1986/1925, r 4.128(3).

12 See ibid r 4.150; and para 662 post.

13 The remuneration calculated in accordance with ibid r 4.127 (as amended) and r 4.127A (as added): see para 589 ante.

14 For the liquidator's powers to request or apply for an increase in his remuneration see ibid r 4.130 (as amended); and para 591 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

590 Other matters affecting remuneration

TEXT AND NOTE 7--After 'holder of the charge' read 'and payments made in respect of preferential debts': SI 1986/1925 r 4.127B(3)(b) (amended by SI 2005/527). SI 1986/1925 r 1.27B(4) added: SI 2010/686.

NOTE 10--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

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591. Recourse of liquidator to meeting of creditors and to the court.

If the liquidator's remuneration has been fixed by the liquidation committee¹, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors². If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors³, or (where he is not the official receiver), the remuneration arrived at by application of the relevant realisation and distribution scales⁴ is insufficient, he may apply to the court for an order increasing its amount or rate⁵. The liquidator must give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application⁶. If there is no liquidation committee, the liquidator's notice of his application must be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented⁷. The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the assets⁸.

1 Ie under the Insolvency Rules 1986, SI 1986/1925, r 4.127(3), (4): see para 589 ante.

2 Ibid r 4.129.

3 Ie under ibid r 4.127(5): see para 589 ante.

4 Ie under ibid r 4.127(6) (as substituted) and r 4.127A (as added): see para 589 ante. As to the relevant realisation and distribution scales see para 589 notes 12, 14 ante. As to the official receiver see para 503 et seq ante.

5 Ibid r 4.130(1). The onus is upon the liquidator applying for an increase in remuneration to explain why his entitlement under r 4.127 (as amended) (see para 589 ante) is insufficient; but, once the onus is discharged by the liquidator showing that the remuneration is insufficient, the court has an unfettered discretion as to basis and amount: *Re Tony Rowse NMC Ltd* [1996] 2 BCLC 225, [1996] BCC 196 (application by former voluntary liquidator).

In respect of any application for the fixing and approval of remuneration made by, inter alia, a liquidator after 1 October 2004, *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) will apply: para 2.1(2). The practice statement will apply also to applications by a creditor of the company for the liquidator's remuneration to be reduced under the Insolvency Rules 1986, SI 1986/1925, r 4.131 (see para 592 post) or, it seems, to an application by an interested party to invoke the court's power of supervision of a liquidator appointed in a compulsory winding up as officer of the court to reduce his remuneration: *Practice Statement* para 2.1(3). As to the exercise of such jurisdiction by the court over a trustee in bankruptcy see *Upton v Taylor and Colley* [1999] BPIR 168, DC; *Engel v Peri* [2002] EWHC 799 (Ch), [2002] BPIR 961. The objective of *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) is to ensure that the remuneration of, inter alia, a liquidator which is fixed and approved by the court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken by the liquidator in any given case and is fixed and approved by reference to a process which is consistent and predictable: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 3.2. The practice statement sets out guiding principles, by reference to which such applications are to be considered both by applicants, in the preparation and presentation of their application, and by the court which is required to determine the application: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) paras 3.3-3.4.

Unless otherwise ordered by the court having regard to the particular circumstances of the application, all such applications are to be made in the first instance, where the court is the High Court, to a registrar or district judge in the appropriate district registry of the High Court or, where the court is county court, to a district judge

in the appropriate county court: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 4.1. The directions which may be given on the application include, in appropriate cases, a direction that an assessor or costs judge prepare a report to the court in respect of the remuneration or that the registrar or district judge sit with an assessor or costs judge when hearing the application, though in the usual course the registrar or district judge will determine the application without the assistance of an assessor or costs judge: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) paras 4.2-4.3. The costs of any such assessor must be paid from the assets under the control of the liquidator: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 4.6. Detailed guidance is given as to the evidence to be placed before the court on such application: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) paras 5.1-5.6. On such application, the court may make an order permitting payments of remuneration to be made on account subject to final approval, whether by the court or otherwise: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 5.7.

Unless otherwise ordered by the court (or as may otherwise be provided for in any enactment or rules of procedure), the costs of and occasioned by an application for the fixing and/or approval of the remuneration of a liquidator are to be paid from the assets under the control of the liquidator: *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 5.8.

6 Insolventcy Rules 1986, SI 1986/1925, r 4.130(2).

7 Ibid r 4.130(3).

8 Ibid r 4.130(4) (amended by SI 1987/1919). See further *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 5.8; and note 5 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

591 Recourse of liquidator to meeting of creditors and to the court

TEXT AND NOTES 1, 2--SI 1986/1925 r 4.129 substituted by r 4.129A: SI 2010/686.

TEXT AND NOTE 5--SI 1986/1925 r 4.130(1) substituted: SI 2010/686.

NOTE 5--*Engel*, cited, applied in *Halabi v Camden LBC* [2008] EWHC 322 (Ch), [2008] BPIR 370.

TEXT AND NOTE 8--SI 1986/1925 r 4.130(4) further amended: SI 2008/737.

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592. Creditors' claim that remuneration is excessive.

Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors, including himself, apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive¹. The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it must not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice; and, if the application is not so dismissed, the court must fix a venue² for it to be heard, and give notice to the applicant accordingly³. The applicant must, at least 14 days before that hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it⁴. If the court considers the application to be well-founded, it must make an order fixing the remuneration at a reduced amount or rate⁵. Unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable out of the assets⁶.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.131(1). In respect of any such application issued after 1 October 2004, *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) will apply: see *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 2.1(3); and para 591 note 5 ante.

² For the meaning of 'venue' see para 91 note 7 ante.

³ Insolvency Rules 1986, SI 1986/1925, r 4.131(2). As to the making of applications see para 1055 post.

⁴ Ibid r 4.131(3).

⁵ Ibid r 4.131(4).

⁶ Ibid r 4.131(5). See further *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) para 5.8; and note 1 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

592 Creditors' claim that remuneration is excessive

TEXT AND NOTES--SI 1986/1925 r 4.131(1), (4) substituted, r 4.131(1A) added: SI 2010/686. See SI 1986/1925 r 4.108A (resignation (application under r 4.131)), r 4.131A (review of remuneration), r 4.131B (remuneration of new liquidator), r 4.131C (apportionment of set fee remuneration) (added by SI 2010/686).

TEXT AND NOTE 6--SI 1986/1925 r 4.131(5) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/ (v) Liquidator's Remuneration and Costs/593. Limits of liquidator's rights.

593. Limits of liquidator's rights.

Where a winding-up order is discharged, the liquidator under it is not entitled as against any person to any remuneration or costs¹. The liquidator's claim to remuneration and costs is against the assets of the company, and then only so far as they exist without interfering with the rights of secured creditors². Where, however, the property is realised or preserved in the winding-up proceedings for their benefit, the costs of realisation and preservation may be retained out of the fund in priority to their claims³, if those costs can be distinguished from the general costs of the winding up⁴.

A liquidator may, in appropriate circumstances, be allowed his expenses and remuneration out of assets which do not fall within the liquidation (such as trust assets)⁵.

1 *Re Plumstead Waterworks Co Ltd, ex p Hardinge* (1862) 11 WR 99.

2 *Re Oriental Hotels Co, Perry v Oriental Hotels Co* (1871) LR 12 Eq 126 at 133; *Re Anglo-Austrian Printing and Publishing Union, Brabourne v Anglo-Austrian Printing and Publishing Union* [1895] 2 Ch 891. For the meaning of 'secured creditor' see para 109 note 10 ante.

3 *Re Regent's Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411 at 427, CA; *Ford v Earl of Chesterfield (No 3)* (1856) 21 Beav 426; *Wright v Kirby* (1857) 23 Beav 463; *Re Marine Mansions Co* (1867) LR 4 Eq 601 at 612; *Re Oriental Hotels Co, Perry v Oriental Hotels Co* (1871) LR 12 Eq 126; *Re Johnson, ex p Royle* (1875) LR 20 Eq 780; *Re Wrexham, Mold and Connah's Quay Rly Co* [1900] 1 Ch 261, CA.

4 *Re Professional Life Assurance Co* (1867) 3 Ch App 167 at 175.

5 *Re Berkeley Applegate (Investment Consultants) Ltd, Harris v Conway* [1989] Ch 32, [1988] 3 All ER 71; *Re Eastern Capital Futures Ltd (in liquidation)* [1989] BCLC 371, 5 BCC 223; *Re Telesure Ltd* [1997] BCC 580; *Re Local London Residential Ltd* [2004] EWHC 114 (Ch), [2004] BPIR 599. Such remuneration is chargeable to the trust assets only, and not to the assets falling within the liquidation: *Re Berkeley Applegate (Investment Consultants) Ltd (No 3)* (1989) 5 BCC 803.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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594. Costs of outside litigation.

Where a liquidator sues or defends claims or other proceedings in the name of the company, he is not a party to the claim and cannot, save in exceptional circumstances, be ordered to pay the costs personally¹; but, when he is the applicant in proceedings brought by him as liquidator, an order for costs will usually be made against the liquidator personally, where his claim fails², even if he is also the official receiver³. If the proceedings in which the order is made are not in the winding up, the order may be made without prejudice to any application he may make to have the costs allowed out of the assets⁴, or the court may order that he is to be repaid the costs out of the company's assets⁵. As a general rule the liquidator is entitled to his costs of litigation out of the assets⁶, but he may be deprived of them for making a mistake, or where the proceedings are improperly taken by him, even if sanctioned by the liquidation committee⁷ (although it seems that the order depriving him of costs is subject to appeal⁸). Where the liquidator is the respondent in proceedings brought against him as liquidator and is unsuccessful, the costs should be ordered to be paid out of the assets⁹.

A liquidator who is unsuccessful on appeal will usually be ordered to pay the costs if he is appellant¹⁰, but not if he is respondent¹¹. In that event the appellant is entitled only to costs out of the assets, unless the liquidator has done something to make himself personally liable for costs¹². In proceedings brought by the liquidator, the court may order the liquidator personally to pay the costs, and, in considering whether to make such an order, in a case where he has opposed an application for security, the court would have regard to his opposition; accordingly, a liquidator taking proceedings in his own name will not as a rule be ordered to give security for costs¹³.

A successful litigant in proceedings either with the liquidator, or with the company through its liquidators, or with the company after liquidation has begun, is prima facie entitled to be paid immediately the costs ordered to be paid to him, and to be paid in full. The onus is on the liquidator to show that immediate payment cannot be made, or that other persons have claims in priority or ranking pari passu¹⁴. The court has jurisdiction to order that the costs of litigation which has been continued by the liquidator be paid as an expense of the winding up in priority to the general costs of the winding up¹⁵.

Costs of outside litigation are not specifically referred to in the general rules as to the priority of payment of the expenses of the liquidation out of the assets¹⁶; but nothing in the Insolvency Rules 1986 applies to or affects the power of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator, and nor do they affect the rights of any person to whom such costs are ordered to be paid¹⁷.

1 *Fraser v Province of Brescia Steam Tramways Co* (1887) 56 LT 771; cf *Freehold Land and Brickmaking Co v Spargo* [1869] WN 160 (where the liquidator was ordered to pay costs personally in the first instance); *Van Den Hurk v R Martens & Co Ltd* [1920] 1 KB 850 (costs of special case in arbitration proceedings on liquidator's application ordered to be paid personally by liquidator with right to be recouped out of assets); and see *Metalloy Supplies Ltd (in liquidation) v MA (UK) Ltd* [1997] 1 All ER 418, [1997] 1 WLR 1613, CA (whilst there is jurisdiction to order a liquidator personally to pay the costs of proceedings brought by the company in liquidation, the jurisdiction will be exercised only in exceptional circumstances and impropriety is a necessary precondition to such an order). The remedy to apply for security for costs is available to the defendant: *Metalloy Supplies Ltd (in liquidation) v MA (UK) Ltd* supra. As to the claims of the solicitor acting in the winding up against the liquidator see para 582 ante.

2 *Re Wilson Lovatt & Sons Ltd* [1977] 1 All ER 274.

3 *Re W Powell & Sons* [1896] 1 Ch 681; *Ferrao's Case* (1874) 9 Ch App 355. As to costs in connection with public examinations see para 549 ante. As to the official receiver's liability for costs see para 550 ante. As to the official receiver see para 503 et seq ante.

4 See *Consols Insurance Co (Official Managers) v Wood* (1865) 2 Drew & Sm 353; *Re Wilson Lovatt & Sons Ltd* [1977] 1 All ER 274. Proceedings otherwise than in the winding up will normally be conducted by the liquidator in the company's name, in which case he will not be personally liable for costs: see the text and note 1 supra.

5 *Re Joint Stock Discount Co, Sichell's Case* (1867) 3 Ch App 119 at 124; *Campbell's Case* (1876) 4 ChD 470 at 475 (winding-up proceedings); *Van Den Hurk v R Martens & Co Ltd* [1920] 1 KB 850 (an order made in proceedings not in the winding up).

6 *Re Wheal Vyvyan Mining Co, Wescomb's Case* (1874) 9 Ch App 553; *Re Wilson Lovatt & Sons Ltd* [1977] 1 All ER 274. See, however, *Re Romar Engineering Co Ltd* [2003] BCC 535; *Lewis v IRC* [2001] 3 All ER 499, [2001] 2 BCLC 392, CA (in which it was said that the source of the jurisdiction to allow recoupment out of the assets is unclear). In *Re Romar Engineering Co Ltd* supra, some doubt was cast on the proposition in *Re Wilson Lovatt & Sons Ltd* supra that the liquidator was entitled to recoup himself unless he has been guilty of misconduct; an application by a liquidator for recoupment in respect of costs already incurred was refused, because it was premature (since the litigation had not yet been tried, and the application was in respect of costs already incurred rather than costs to be incurred in the litigation) and in any event the evidence before the court was insufficient to allow the court to conclude that the liquidator had proceeded properly in pursuing the litigation.

7 *Re Smith, ex p Brown* (1886) 17 QBD 488, CA (a bankruptcy case); *Re Silver Valley Mines* (1882) 21 ChD 381, CA; and see *Clifton's Case* (1854) 5 De GM & G 743; *Re China Steamship and Labuan Coal Co Ltd, Drummond's Case* (1869) 4 Ch App 772.

8 *Re Silver Valley Mines* (1882) 21 ChD 381, CA; *Re Raynes Park Golf Club, ex p Official Receiver* [1899] 1 QBD 961, DC; but see *Re John Tweddle & Co Ltd* [1910] 2 KB 697 at 709, CA.

9 *Re Regent United Service Stores, ex p Bentley* (1879) 12 ChD 850 at 857; *Re Marseilles Extension Rly and Land Co, Smallpage's and Brandon's Cases* (1885) 30 ChD 598 at 604-605; and see *Van Den Hurk v R Martens & Co Ltd* [1920] 1 KB 850.

10 *Re City and County Investment Co* (1879) 13 ChD 475, CA. The question whether he is to have them out of the assets is left to the judge controlling the winding up: *Re City and County Investment Co* supra at 483; *Re Trent and Humber Co, ex p Cambrian Steam Packet Co* (1868) 4 Ch App 112 at 117; *Re Silver Valley Mines* (1882) 21 ChD 381 at 387, 392, CA.

11 *Re R Bolton & Co, Salisbury-Jones and Dale's Case* [1895] 1 Ch 333, CA (overruling *Re Staffordshire Gas and Coke Co* [1893] 3 Ch 523). In *Re Wheal Vyvyan Mining Co, Wescomb's Case* (1874) 9 Ch App 553, the Court of Appeal in Chancery refused to make an order for the payment of the liquidator's costs out of the assets but left him to apply to the court having conduct of the winding up.

12 *Re W Powell & Sons* [1896] 1 Ch 681; *Re Western Counties Steam Bakeries and Milling Co* [1897] 1 Ch 617 at 632, CA. The liquidator's banking account cannot be attached in garnishee proceedings by a judgment creditor of the company: *Lancaster Motor Co (London) Ltd v Bremith Ltd* [1941] 1 KB 675, [1941] 2 All ER 11, CA.

13 *Re W Powell & Sons* [1896] 1 Ch 681; *Re Strand Wood Co Ltd* [1904] 2 Ch 1, CA.

14 *Re Pacific Coast Syndicate Ltd* [1913] 2 Ch 26; *Re London Metallurgical Co* [1895] 1 Ch 758; *Re Home Investment Society* (1880) 14 ChD 167; *Re Dominion of Canada Plumbago Co* (1884) 27 ChD 33, CA; cf *Re Marlborough Club Co, ex p Percival* (1868) LR 6 Eq 519; *Re Dronfield Silkstone Coal Co (No 2)* (1883) 23 ChD 511; *Re National Building and Land Co, ex p Clitheroe* (1885) 15 LR 1r 47; *Smith v UIC Insurance Co Ltd* [2001] BCC 11 (the principle in the cases cited is applicable in the context of provisional liquidation). The fact that costs orders are payable immediately and in full might lead the court to dismiss an application for security for costs made against the company in liquidation or provisional liquidation: *Smith v UIC Insurance Co Ltd* supra.

15 *Re Movitex Ltd* [1990] BCLC 785, [1990] BCC 491.

16 See the Insolvency Rules 1986, SI 1986/1925, rr 4.218-4.220 (as amended); and para 810 et seq post. An order for costs simpliciter is sufficient to confer priority over the matters mentioned in r 4.218 (as amended): see *Re Pacific Coast Syndicate Ltd* [1913] 2 Ch 26; *Re Movitex Ltd* [1990] BCLC 785, [1990] BCC 491.

17 See the Insolvency Rules 1986, SI 1986/1925, r 4.220(2); and para 810 post. As to costs see further para 809 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/595. Liquidator's duty to keep financial records.

(vi) Books, Accounts and Audit

595. Liquidator's duty to keep financial records.

The liquidator¹ in a winding up by the court must prepare and keep:

- 1071 (1) separate financial records in respect of each company²; and
- 1072 (2) such other financial records as are required to explain the receipts and payments duly entered in the records³, including an explanation of the source of any receipts and the destination of any payments⁴.

He must, subject to provisions as to trading accounts⁵, from day to day enter in those records all the receipts and payments made by him⁶. The liquidator must obtain and keep bank statements relating to any local bank account⁷ in the name of the company⁸; and he must submit the financial records to the liquidation committee⁹ when required for inspection¹⁰. If the liquidation committee is not satisfied with the contents of the financial records so submitted, it may so inform the Secretary of State, giving the reasons for its dissatisfaction; and the Secretary of State may take such action as he thinks fit¹¹.

1 For these purposes, 'liquidator' includes, in the case of a company being wound up by the court, the official receiver when so acting: Insolvency Regulations 1994, SI 1994/2507, reg 3. As to the official receiver see para 503 et seq ante.

2 Ibid reg 10(1), (2)(a).

3 Ie the records described in ibid reg 10(2)(a) (see the text and note 2 supra) or reg 12(2) (see para 597 post).

4 Ibid reg 10(2)(b).

5 Ie subject to ibid reg 12(2).

6 Ibid reg 10(2). Regulation 10 does not apply in the case of a members' voluntary winding up: reg 10(1).

7 As to local bank accounts see para 605 post.

8 Insolvency Regulations 1994, SI 1994/2507, reg 10(3).

9 As to the liquidation committee see para 629 et seq post.

10 Insolvency Regulations 1994, SI 1994/2507, reg 10(4).

11 Ibid reg 10(5). As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/596. Provision of information by liquidator.

596. Provision of information by liquidator.

The liquidator¹ must, within 14 days of the receipt of a request for a statement of his receipts and payments as liquidator from any creditor, contributory or director of the company, supply free of charge to the person making the request a statement of his receipts and payments as liquidator during the period of one year ending on the most recent anniversary of his becoming liquidator which preceded the request².

1 As to the meaning of 'liquidator' for these purposes see para 595 note 1 ante.

2 Insolvency Regulations 1994, SI 1994/2507, reg 11(1).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/597. Liquidator carrying on business.

597. Liquidator carrying on business.

Where the liquidator¹ in a winding up by the court carries on any business of the company, he must:

- 1073 (1) keep a separate and distinct account of the trading, including where appropriate particulars of all local bank account transactions²; and
- 1074 (2) incorporate in the financial records required to be kept by him³ the total weekly amounts of the receipts and payments made by him in relation to the account so kept⁴.

1 As to the meaning of 'liquidator' for these purposes see para 595 note 1 ante.

2 Insolvency Regulations 1994, SI 1994/2507, reg 12(1), (2)(a). For the meanings of 'local bank' and 'local bank account' see para 605 note 2 post. Regulation 12 does not apply in the case of a members' voluntary winding up: reg 12(1).

3 Ie under ibid reg 10: see para 595 ante.

4 Ibid reg 12(2)(b).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/598. Retention and delivery of records.

598. Retention and delivery of records.

All records kept by the liquidator¹ under the provisions relating to the maintenance of financial records² and any such records received by him from a predecessor in that office must be retained by him for a period of six years following his vacation of office³ or, in the case of the official receiver, his release as liquidator⁴, unless he delivers them to another liquidator who succeeds him in office⁵. Where the liquidator is succeeded in office by another liquidator, such records must be delivered to that successor forthwith, unless, in the case of a winding up by the court, the winding up is for practical purposes complete and the successor is the official receiver, in which case the records are only to be delivered to the official receiver if the latter so requests⁶.

1 As to the meaning of 'liquidator' for these purposes see para 595 note 1 ante.

2 Ie under the Insolvency Regulations 1994, SI 1994/2507, reg 10 (see para 595 ante) and reg 12(2) (see para 597 ante).

3 Ibid reg 13(1)(a).

4 Ibid reg 13(1)(a). As to the official receiver's release as liquidator see the Insolvency Act 1986 s 174; and para 624 post. As to the official receiver see para 503 et seq ante.

5 Insolvency Regulations 1994, SI 1994/2507, reg 13(1). As to the records to be kept by all insolvency practitioners see para 42 et seq ante.

6 Ibid reg 13(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/599. Provision and audit of accounts.

599. Provision and audit of accounts.

The liquidator¹ must, if required by the Secretary of State at any time, send to the Secretary of State an account in relation to the company of the liquidator's receipts and payments covering such period as the Secretary of State may direct; and such account must, if so required by the Secretary of State, be certified by the liquidator².

Where the liquidator in a winding up by the court vacates office prior to the holding of the final general meeting of creditors³, he must within 14 days of vacating office send to the Secretary of State an account of his receipts and payments as liquidator for any period not covered by an account previously so sent by him or, if no such account has been sent, an account of his receipts and payments in respect of the whole period of his office⁴.

In the case of a winding up by the court, where a final general meeting of creditors has been held or is deemed to have been held, the liquidator must send to the Secretary of State an account of his receipts and payments as liquidator which are not covered by any previous account so sent by him or, if no such account has been sent, an account of his receipts and payments in respect of the whole period of his office⁵.

In the case of a winding up by the court where a statement of affairs has been submitted⁶, any account sent under these provisions must be accompanied by a summary of that statement of affairs and must show the amount of any assets realised and explain the reasons for any non-realisation of any assets not realised⁷. In the case of a winding up by the court where a statement of affairs has not been submitted, any account sent under these provisions must be accompanied by a summary of all known assets and their estimated values and must show the amounts actually realised and explain the reasons for any non-realisation of any assets not realised⁸.

Any account sent to the Secretary of State must, if he so requires, be audited; but, whether or not the Secretary of State requires the account to be audited, the liquidator must send to the Secretary of State on demand any documents, including vouchers and bank statements, and any information relating to the account¹³.

1 As to the meaning of 'liquidator' for these purposes see para 595 note 1 ante.

2 Insolvency Regulations 1994, SI 1994/2507, reg 14(1). As to the Secretary of State see para 11 note 10 ante.

3 Ie under the Insolvency Act 1986 s 146: see para 626 post.

4 Insolvency Regulations 1994, SI 1994/2507, reg 14(2).

5 Ibid reg 14(3). Where a final general meeting of creditors has been held (ie pursuant to the Insolvency Act 1986 s 146 (see para 626 post)), this account must be sent within 14 days of the holding of the final general meeting of creditors: Insolvency Regulations 1994, SI 1994/2507, reg 14(3)(a). Where a final general meeting is deemed to have been held (ie by virtue of the Insolvency Rules 1986, SI 1986/1925, r 4.125(5) (see para 627 post)), the account must be sent within 14 days of the liquidator's report to the court pursuant to r 4.125(5): Insolvency Regulations 1994, SI 1994/2507, reg 14(3)(b).

6 Ie under the Insolvency Act 1986.

7 Insolvency Regulations 1994, SI 1994/2507, reg 14(4).

8 Ibid reg 14(5).

9 Ibid reg 14(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/600. Production and inspection of records.

600. Production and inspection of records.

The liquidator¹ must produce on demand to the Secretary of State, and allow him to inspect, any accounts, books and other records kept by him, including any passed to him by a predecessor in office². Any such demand:

- 1075 (1) may require the liquidator to produce any such accounts, books or other records to the Secretary of State, and allow him to inspect them, at the same time as any account is sent to the Secretary of State³ or at any time after such account is sent to the Secretary of State, whether or not the Secretary of State requires the account to be audited⁴; or
- 1076 (2) where it is made for the purpose of ascertaining whether the provisions⁵ relating to the handling of money received by the liquidator in the course of carrying out his functions have been or are likely to be complied with, may be made at any time, whether or not an account has been sent or should have been sent to the Secretary of State⁶ and whether or not the Secretary of State has required any account to be audited⁷.

The liquidator must allow the Secretary of State on demand to remove and take copies of any accounts, books and other records kept by the liquidator, including any passed to him by a predecessor in office, whether or not they are kept at the premises of the liquidator⁸.

1 As to the meaning of 'liquidator' for these purposes see para 595 note 1 ante.

2 Insolvency Regulations 1994, SI 1994/2507, reg 15(1). As to the Secretary of State see para 11 note 10 ante. The duty to produce and allow inspection extends to producing and allowing inspection at the liquidator's premises (reg 15(1)(a)) and to producing and allowing inspection of any financial records of the kind described in reg 10(2)(b) (see para 595 ante) prepared by the liquidator, or any predecessor of his, before 24 October 1994 (ie the date on which the Insolvency Regulations 1994, SI 1994/2507, were brought into force: see reg 1) and kept by the liquidator (reg 15(1)(b)).

3 Ie under *ibid* reg 14: see para 599 ante.

4 *Ibid* reg 15(1)(i).

5 Ie the provisions of the Insolvency Regulations 1994, SI 1994/2507 (as amended).

6 Ie under *ibid* reg 14.

7 *Ibid* reg 15(1)(ii).

8 *Ibid* reg 15(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/601. Disposal of company's books, papers and other records.

601. Disposal of company's books, papers and other records.

The liquidator¹ in a winding up by the court, on the authorisation of the official receiver², during his tenure of office or on vacating office, or the official receiver while acting as liquidator, may at any time sell, destroy or otherwise dispose of the books, papers and other records of the company³.

1 As to the meaning of 'liquidator' for these purposes see para 595 note 1 ante.

2 As to the official receiver see para 503 et seq ante.

3 Insolvency Regulations 1994, SI 1994/2507, reg 16(1). As to the preservation and disposal of the records to be kept by all insolvency practitioners see para 45 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vi) Books, Accounts and Audit/602. Statements of position of liquidation.

602. Statements of position of liquidation.

Where any winding up is not concluded within one year after its commencement¹, the liquidator must at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation²; and, if a liquidator fails to comply with this provision, he will be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum³. These provisions are not, however, in practice operative in the case of a winding up by the court because the rules fixing the intervals for sending in statements and the form of statements apply only to voluntary winding up and not to winding up by the court⁴.

¹ As to the commencement of the winding up see para 489 ante.

² Insolvency Act 1986 s 192(1). Any person may inspect or obtain a copy or extract of the prescribed statements: see the Companies Act 1985 s 709(1) (as substituted and amended (now repealed)); and COMPANIES vol 14 (2009) PARA 149. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

³ Insolvency Act 1986 ss 192(2), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

⁴ See the Insolvency Rules 1986, SI 1986/1925, r 4.223 (as amended); and para 1005 post. As to the provisions made for the audit of the liquidator's account in the case of a winding up by the court see para 598 et seq ante; and as to the rules made in connection with the Insolvency Act 1986 s 192, so far as applicable to a voluntary winding up, see paras 1005-1008 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends/603. Payments into Insolvency Services Account.

(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends

603. Payments into Insolvency Services Account.

In the case of a winding up by the court, subject to provisions relating to local bank accounts¹, the liquidator² must pay all money received by him in the course of carrying out his functions as such without any deduction into the Insolvency Services Account³ kept by the Secretary of State with the Bank of England to the credit of the company once every 14 days, or forthwith if £5,000 or more has been received⁴. Every such payment of money must be made through the bank giro system or sent direct to the Bank of England, Threadneedle Street, London, EC2R 8AH, by cheque drawn in favour of the 'Insolvency Services Account' and crossed 'A/C payee only' 'Bank of England' or made by electronic transfer; and the liquidator must on request be given by the Department of Trade and Industry a receipt for the money so paid⁵. Every payment of money through the bank giro system or sent direct to the Bank of England must be accompanied by a form obtainable on application from the Department of Trade and Industry for that purpose or by a form which is substantially similar; and every payment of money made by electronic transfer must specify the name of the liquidator making the payment and the name of the company to whose credit such payment is made⁶.

1 Ie subject to the Insolvency Regulations 1994, SI 1994/2507, reg 6: see para 605 post.

2 For the meaning of 'liquidator' see para 595 note 1 ante.

3 As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

4 Insolvency Regulations 1994, SI 1994/2507, reg 5(1). As to the Secretary of State see para 11 note 10 ante.

5 Ibid reg 5(3) (reg 5(3) substituted, and reg 5(4) amended, by SI 2000/485). As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

6 Insolvency Regulations 1994, SI 1994/2507, reg 5(4) (as amended: see note 5 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

603 Payments into Insolvency Services Account

TEXT AND NOTES 5, 6--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1994/2507 (amended by SI 2007/3224).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends/604. Payments of disbursements etc out of Insolvency Services Account.

604. Payments of disbursements etc out of Insolvency Services Account.

In the case of a winding up by the court, on application to the Department of Trade and Industry¹, the liquidator must be repaid all necessary disbursements made by him, and expenses properly incurred by him, in the course of his administration to the date of his vacation of office, the repayment being made out of any money standing to the credit of the company in the Insolvency Services Account².

In the case of a winding up by the court, the liquidator may, on application to the Department of Trade and Industry, obtain payment instruments³ to the order of the payee for sums which become payable on account of the company for delivery by the liquidator to the persons to whom the payments are to be made⁴.

In respect of any such application made by the liquidator, the Secretary of State, if requested to do so by the liquidator, may, at his discretion, make the payment which is the subject of the application to the liquidator by electronic transfer or, as an alternative to the issue of payment instruments, make payment by electronic transfer to the persons to whom the liquidator would otherwise deliver payment instruments⁵.

Any such application must be made by the liquidator on a form obtainable from the Department of Trade and Industry for the purpose or on a form that is substantially similar⁶.

In the case of a winding up by the court, on the liquidator vacating office, he must be repaid by any succeeding liquidator out of any funds available for the purpose any necessary disbursements made by him and any expenses properly incurred by him but not repaid before he vacates office⁷.

1 As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

2 Insolvency Regulations 1994, SI 1994/2507, reg 7(1). For the meaning of 'liquidator' see para 595 note 1 ante. As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

3 For these purposes, 'payment instrument' means a cheque or payable order: Insolvency Regulations 1994, SI 1994/2507, reg 3(1).

4 Ibid reg 7(2).

5 Ibid reg 7(A1), (3A) (regs 7(A1), (3A) added by SI 2000/485). As to the Secretary of State see para 11 note 10 ante.

6 Insolvency Regulations 1994, SI 1994/2507, reg 7(4).

7 Ibid reg 7(5). As to the payment of dividends to creditors and returns of capital to contributories see reg 8 (as amended); and paras 815, 819, 831, 839 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

604 Payments of disbursements etc out of Insolvency Services Account

TEXT AND NOTES 1, 3, 6--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1994/2507 (amended by SI 2007/3224).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends/605. Local bank account; handling of funds not belonging to the company.

605. Local bank account; handling of funds not belonging to the company.

Where the liquidator¹ intends to exercise his power to carry on the business of the company, he may apply to the Secretary of State for authorisation to open a local bank account², and the Secretary of State may authorise him to make his payments into and out of a specified bank, subject to a limit, instead of into and out of the Insolvency Services Account³ if satisfied that an administrative advantage will be derived from having such an account⁴.

Money received by the liquidator relating to the purpose for which the account was opened may be paid into the local bank account to the credit of the company to which the account relates⁵. Where money which is not an asset of the company is provided by the liquidator for a specific purpose, it must be clearly identifiable in a separate account⁶.

The liquidator must keep proper records, including documentary evidence of all money paid into and out of every local bank account opened and maintained under these provisions⁷, and must pay⁸ without deduction into the Insolvency Services Account any surplus over any limit imposed by an authorisation so granted⁹.

As soon as the liquidator ceases to carry on the business of the company or vacates office or an authorisation so given is withdrawn, he must close the account and pay¹⁰ any balance into the Insolvency Services Account¹¹.

1 For the meaning of 'liquidator' see para 595 note 1 ante.

2 For these purposes, 'local bank account' means, in the case of a winding up by the court, a current account opened with a local bank under the Insolvency Regulations 1994, SI 1994/2507, reg 6(2); and 'local bank' means any bank in, or in the neighbourhood of, the district in respect of which the court has winding-up jurisdiction, in which the proceedings are taken, or in the locality in which any business of the company is carried on: reg 3(1). As to the Secretary of State see para 11 note 10 ante.

3 As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

4 Insolvency Regulations 1994, SI 1994/2507, reg 6(2). Regulation 6 does not apply in the case of a voluntary winding up: reg 6(1). Where the liquidator opens a local bank account pursuant to an authorisation so granted, he must open and maintain the account in the name of the company: reg 6(4). As to the financial records to be maintained by a liquidator carrying on the business of the company see reg 10; and para 595 ante.

5 Ibid reg 6(3).

6 Ibid reg 6(5).

7 Ibid reg 6(6).

8 Ie in accordance with ibid reg 5 as it applies in the case of a winding up by the court: see para 603 ante.

9 Ibid reg 6(7).

10 Ie in accordance with ibid reg 5 as it applies in the case of a winding up by the court: see para 603 ante.

11 Ibid reg 6(8).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends/606. Investment or otherwise handling of funds and payment of interest.

606. Investment or otherwise handling of funds and payment of interest.

When the cash balance standing to the credit of the company in the account in respect of that company kept by the Secretary of State is in excess of the amount which, in the opinion of the liquidator¹, is required for the immediate purposes of the winding up, and should be invested, he may request the Secretary of State to invest the amount not so required in government securities, to be placed to the credit of that account for the company's benefit². When any of the money so invested is, in the opinion of the liquidator, required for the immediate purposes of the winding up, he may request the Secretary of State to raise such sum as may be required by the sale of such of those securities as may be necessary³.

In cases where investments have been so made at the request of the liquidator and additional sums to the amounts so invested, including money received in respect of investments and interest⁴, are paid into the Insolvency Services Account⁵ to the credit of the company, a request must be made to the Secretary of State by the liquidator if it is desired that these additional sums should be invested⁶.

Any request relating to the investment in, or sale of, as the case may be, treasury bills so made⁷ must be made on a form obtainable from the Department of Trade and Industry⁸ or on one that is substantially similar; and any request relating to the purchase or sale, as the case may be, of any other type of government security so made must be made in writing⁹. Any request so made¹⁰ is sufficient authority to the Secretary of State for the investment or sale, as the case may be¹¹.

At any time after 1 April 2004¹² whenever there is any money standing to the credit of the company in the Insolvency Services Account, the company is entitled to interest on that money¹³.

All money received in respect of investments and interest earned under these provisions must be paid into the Insolvency Services Account to the credit of the company¹⁴.

1 For the meaning of 'liquidator' see para 595 note 1 ante. As to the Secretary of State see para 11 note 10 ante.

2 Insolvency Regulations 1994, SI 1994/2507, reg 9(1).

3 Ibid reg 9(2).

4 Ie under ibid reg 9(7): see the text and note 14 infra.

5 As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

6 Insolvency Regulations 1994, SI 1994/2507, reg 9(3).

7 Ie under ibid reg 9(1), (2) or (3): see the text and notes 1-6 supra. 'Treasury bills' include uncertificated units of eligible treasury bills: Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003, SI 2003/1633 reg 15(1), Sch 2 para 2(h). As to treasury bills see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 730.

8 As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

9 Insolvency Regulations 1994, SI 1994/2507, reg 9(4).

10 Ie under ibid reg 9(1), (2) or (3).

11 Ibid reg 9(5).

12 Ie the date on which the Insolvency (Amendment) Regulations 2000, SI 2000/485, were brought into force: see reg 1(1).

13 Insolvency Regulations 1994, SI 1994/2507, reg 9(6) (reg 9(6) substituted, and reg 9(6A), (6B) added, by SI 2000/485). However, interest ceases to accrue from the date of receipt by the Secretary of State of a notice in writing from the liquidator that in the opinion of the liquidator it is necessary or expedient in order to facilitate the conclusion of the winding up that interest should cease to accrue; although interest will start to accrue again where the liquidator gives a further notice in writing to the Secretary of State requesting that interest should start to accrue again: Insolvency Regulations 1994, SI 1994/2507, reg 9(6A) (as so added). The rate of interest is 4.25% per annum (reg 9(6) (as so substituted)); but the Secretary of State may by notice published in the London Gazette vary the rate, such variation having effect from the date of publication of the notice or such later date as may be specified in the notice (reg 9(6B) (as so added)).

Where a notice that interest should cease is given pursuant to reg 9(6)(a) as it stood before 1 April 2004, that notice must be treated as having been given under reg 9(6A) (as so added): Insolvency (Amendment) Regulations 2004, SI 2004/472, reg 2, Schedule para 2(2).

14 Insolvency Regulations 1994, SI 1994/2507, reg 9(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

606 Investment or otherwise handling of funds and payment of interest

TEXT AND NOTE 8--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1994/2507 (amended by SI 2007/3224).

NOTE 13--Amount varied to 4.75% per annum with effect from 11 November 2008: the London Gazette, 7 November 2008.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends/607. Payment of unclaimed or undistributed assets, dividends or other money on dissolution of company.

607. Payment of unclaimed or undistributed assets, dividends or other money on dissolution of company.

In the case of a company which has been dissolved, notwithstanding anything in the Insolvency Regulations 1994¹, any money in the hands of any, or any former, liquidator² at the date of the dissolution of the company or his earlier vacation of office, representing unclaimed or undistributed assets of the company or dividends or held by the company in trust in respect of dividends or other sums due to any person as a member or former member of the company³, must forthwith be paid by him into the Insolvency Services Account⁴.

1 le the Insolvency Regulations 1994, SI 1994/2507 (as amended).

2 For the meaning of 'liquidator' see para 595 note 1 ante.

3 The words 'as to money held in trust' were introduced in 1948, and their meaning as regards dividends is obscure. A company is a debtor, not a trustee, in respect of unclaimed dividends, and the keeping of an unclaimed dividends account in its books does not create a trust: *Re Severn and Wye and Severn Bridge Rly Co* [1896] 1 Ch 559 at 565. As regards dividends being a debt cf COMPANIES vol 15 (2009) PARA 1415. Moreover, sums due in respect of dividends are postponed to the claims of other creditors by the Insolvency Act 1986 s 74(2)(f) (see *Re Consolidated Goldfields of New Zealand Ltd* [1953] Ch 689, [1953] 1 All ER 791; and para 719 post) and the creation of an expenses trust would, it seems, be void (cf *Re Apex Supply Co Ltd* [1942] Ch 108, [1941] 3 All ER 473). No doubt the words (which do not extend to unclaimed debenture interest) are declaratory, and the money referred to would be comprised in 'undistributed assets' without such words. See also *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668.

4 Insolvency Regulations 1994, SI 1994/2507, reg 18. As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

607 Payment of unclaimed [dividends or other money]

TEXT AND NOTES--References to unclaimed or undistributed assets and undistributed dividends removed, and liquidators in a voluntary winding up now permitted to pay unclaimed dividends or other sums into the Insolvency Services Account: SI 1994/2507 reg 18 (substituted by SI 2008/670). As to payment, on the dissolution of a company, of unclaimed funds and dividends into the Insolvency Services Account by an administrator or an administrative receiver and the information which must be provided see SI 1994/2507 regs 3B, 3C (both added by SI 2008/670).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(vii) Banking Accounts and Investment of Funds; Unclaimed Funds and Dividends/608. Claiming money paid into the Insolvency Services Account.

608. Claiming money paid into the Insolvency Services Account.

Any person claiming to be entitled to any moneys paid into the Insolvency Services Account¹ may apply to the Secretary of State for payment, and must provide such evidence of his claim as the Secretary of State may require².

Any person dissatisfied with the decision of the Secretary of State in respect of his claim so made may appeal to the court³.

¹ As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

² Insolvency Regulations 1994, SI 1994/2507, reg 32(1). As to the Secretary of State see para 11 note 10 ante.

³ Ibid reg 32(2). As to the procedure on appeal see paras 1039, 1055 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/609. Resignation of liquidator.

(viii) Resignation, Removal or Vacancy in Office of Liquidator

609. Resignation of liquidator.

A liquidator appointed by the court may, by giving notice to the court, resign his office either:

- 1077 (1) on grounds of ill-health¹;
- 1078 (2) because he intends ceasing to be in practice as an insolvency practitioner²;
or
- 1079 (3) because there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of liquidator³.

Before resigning his office, the liquidator must call a meeting of creditors for the purpose of receiving his resignation; and the notice summoning the meeting⁴ must indicate that this is the purpose, or one of the purposes of it, and must draw the attention of creditors to the provisions with respect to the liquidator's release⁵. A copy of the notice must at the same time also be sent to the official receiver⁶. The notice to creditors summoning the meeting must be accompanied by an account of the liquidator's administration of the winding up, including a summary of his receipts and payments, and a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up⁷.

Where two or more persons are acting as liquidator jointly, any one of them may proceed under these provisions (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators⁸.

If there is no quorum present⁹ at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the liquidator's resignation be accepted and the creditors are deemed not to have resolved against the liquidator having his release¹⁰. In such a case, any reference in the Insolvency Rules 1986 to a resolution that the liquidator's resignation be accepted is replaced by a reference to the making of a written statement, signed by the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the liquidator may resign¹¹.

Where a meeting is summoned to receive the liquidator's resignation, the chairman, if he is not the official receiver, must within three days send to the official receiver a copy of any resolution passed at the meeting that the liquidator's resignation be accepted, that a new liquidator be appointed, or that the resigning liquidator be not given his release¹². If it has been resolved to accept the liquidator's resignation, the chairman must also send to the official receiver a certificate to that effect¹³. If the creditors have resolved to appoint a new liquidator, the certificate of his appointment must also be sent to the official receiver within that time, and the formalities relating to the certificate of appointment of a liquidator¹⁴ must be complied with in respect of it¹⁵. If the liquidator's resignation is accepted, the requisite notice of it¹⁶ must be given by him forthwith after the meeting; and he must send a copy to the official receiver; and the notice must be accompanied by a copy of the account¹⁷ sent to creditors¹⁸. The official receiver must file a copy of the notice in court¹⁹. The liquidator's resignation is effective as from

the date on which the official receiver files the copy notice in court, that date to be indorsed on the copy notice²⁰.

- 1 Insolvency Act 1986 s 172(6); Insolvency Rules 1986, SI 1986/1925, r 4.108(4).
- 2 Insolvency Act 1986 s 172(6); Insolvency Rules 1986, SI 1986/1925, r 4.108(4)(a). As to insolvency practitioners and their qualification see para 8 et seq ante.
- 3 Insolvency Act 1986 s 172(6); Insolvency Rules 1986, SI 1986/1925, r 4.108(4)(b).
- 4 For the prescribed form of notice see *ibid* rr 4.108, 12.7, Sch 4 Form 4.22.
- 5 *Ibid* r 4.108(1). For a discussion of the purpose of r 4.108 see *Re Sankey Furniture Ltd, ex p Harding, Re Calorifique Ltd, ex p Betts* [1995] 2 BCLC 594. As to the provisions with respect to the liquidator's release see the Insolvency Rules 1986, SI 1986/1925, r 4.121; and para 623 post.
- 6 *Ibid* r 4.108(2). As to the official receiver see para 503 et seq ante.
- 7 *Ibid* r 4.108(3). As to the Secretary of State see para 11 note 10 ante.
- 8 *Ibid* r 4.108(5).
- 9 As to the quorum see para 667 post.
- 10 Insolvency Rules 1986, SI 1986/1925, r 4.108(6) (r 1.108(6) substituted, and r 4.108(7) added, by SI 1987/1919).
- 11 Insolvency Rules 1986, SI 1986/1925, r 4.108(7) (as added: see note 10 supra).
- 12 *Ibid* r 4.109(1), (2). As to the liquidator's resignation see r 4.111; and para 610 post.
- 13 *Ibid* r 4.109(2).
- 14 *Ie* *ibid* r 4.100: see para 557 ante.
- 15 *Ibid* r 4.109(3).
- 16 *Ie* the notice required under the Insolvency Act 1986 s 172(6): see the text and notes 1-3 supra. For the prescribed form of notice see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 4.32.
- 17 *Ie* the account accompanying the notice to creditors summoning the meeting under *ibid* r 4.108(3): see the text and note 7 supra.
- 18 *Ibid* r 4.109(4).
- 19 *Ibid* r 4.109(5). For the meaning of 'file in court' see para 129 note 3 ante.
- 20 *Ibid* r 4.109(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

609 Resignation of liquidator

TEXT AND NOTES 3-5, 7--SI 1986/1925 r 4.108(1A), (1B) added, r 4.108(3) substituted: SI 2010/686 (amended by SI 2010/734).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/610. Leave to resign granted by the court.

610. Leave to resign granted by the court.

If at a creditor's meeting summoned to accept the liquidator's resignation it is resolved that it be not accepted, the court may, on the liquidator's application, make an order giving him leave to resign¹. The court's order may include such provisions as it thinks fit with respect to matters arising in connection with the resignation, and must determine the date from which the liquidator's release is effective². The court must send two sealed copies of the order to the liquidator, who must send one of the copies forthwith to the official receiver³. On sending notice of his resignation to the court following leave granted by the court, the liquidator must send a copy of it to the official receiver⁴.

Where a liquidator seeks to resign on grounds of ill-health, the court will invariably make an order giving leave to resign⁵. In cases where a practitioner seeks to be removed from several offices at once, the court has been willing to bypass the procedures for investigation and make orders removing the practitioner and appointing a suitable replacement⁶.

1 Insolventy Rules 1986, SI 1986/1925, r 4.111(1). For the prescribed form of order see rr 4.111, 12.7, Sch 4 Form 4.34.

2 Ibid r 4.111(2).

3 Ibid r 4.111(3). As to the official receiver see para 503 et seq ante.

4 Ibid r 4.111(5). For the prescribed form of notice of resignation see Sch 4 Form 4.36.

5 *Re Sankey Furniture Ltd, ex p Harding, Re Calorifique Ltd, ex p Betts* [1995] 2 BCLC 594. The position is different where a liquidator is seeking to resign his office because he is changing firms; and in such a situation the creditors should be consulted: *Re Sankey Furniture Ltd, ex p Harding, Re Calorifique Ltd, ex p Betts* supra.

6 See *Re Parkdawn Ltd* (15 June 1993, unreported) (office-holder retired due to ill-health); *Re Bullard & Taplin Ltd* [1996] BCC 973, [1996] BPIR 526 (office-holder's partnership dissolved and its business taken over by another firm based in different towns from the dissolved firm); *Re A & C Supplies Ltd* [1998] 1 BCLC 603, [1998] BCC 708 (office-holder expelled from partnership and could not manage on his own); *Re Crickhowell Construction Ltd, Re Blandford Enterprises* (31 July 1995, unreported) (office-holder retired from partnership from which he had practised); *Re Equity Nominees Ltd* [1999] 2 BCLC 19. As to the terms which may be imposed as a condition of making orders for removal see *Re Equity Nominees Ltd* supra. For the practice governing applications for replacement of office-holders in multiple cases see *Practice Direction--Insolvency Proceedings* para 1.6. The block replacement of office-holders was discussed in *Deloitte & Touche AG v Johnson* [2000] 1 BCLC 485, PC, considering similar provisions of Cayman Islands law. The block transfer of appointments may be reviewed on application by a creditor under the Insolventy Rules 1986, SI 1986/1925, r 7.47 (see para 1030 post): *Customs and Excise Comrs v Allen* [2003] BPIR 830. There is no power to backdate a block transfer order: *Darrell v Miller* [2003] EWHC 2811 (Ch), [2004] BPIR 470.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/611. Advertisement of resignation.

611. Advertisement of resignation.

Where a new liquidator is appointed in place of one who has resigned, the former must, in giving notice of his appointment¹, state that his predecessor has resigned and, if it be the case, that he has been given his release².

¹ As to the provisions relating to the giving of notices and advertisement of the appointment of a liquidator see para 557 et seq ante.

² Insolvency Rules 1986, SI 1986/1925, r 4.112. As to the release of the liquidator see para 623 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/612. Removal of liquidator.

612. Removal of liquidator.

Where a company is being wound up by the court, a liquidator may be removed from office only by an order of the court or by a general meeting of the company's creditors summoned specially for that purpose¹. A provisional liquidator may be removed from office only by an order of the court².

Where:

- 1080 (1) the official receiver is a liquidator, otherwise than in succession, by reason of any vacancy³, to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories⁴; or
- 1081 (2) a liquidator was appointed by the court in general terms⁵, or was appointed by the Secretary of State⁶,

a general meeting of the company's creditors must be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested⁷ by not less than one-quarter, in value, of the company's creditors⁸.

A liquidator who was appointed by the Secretary of State may be removed from office by a direction of the Secretary of State⁹.

The court may impose terms upon the grant of an application for removal¹⁰.

1 Insolvency Act 1986 s 172(1), (2). As to the provisions relating to such a general meeting of creditors see para 613 et seq post; and as to the removal of a liquidator by the court see para 616 post.

2 Ibid s 172(2). As to provisional liquidators see para 491 et seq ante.

3 Ie under ibid s 136(3): see para 510 ante. As to the official receiver see para 503 et seq ante.

4 Ibid s 172(3)(a).

5 Ie otherwise than under ibid s 139(4)(a) (appointment of person nominated by contributories where different persons nominated as liquidator at meetings of creditors and contributories: see para 534 ante) or s 140(1) (as substituted) (appointment of administrator as liquidator upon appointment of administrator ceasing to have effect: see para 558 ante).

6 Ibid s 172(3)(b). As to the Secretary of State see para 11 note 10 ante.

7 As to the procedure relating to the requisitioning of meetings see para 652 et seq post.

8 Insolvency Act 1986 s 172(3).

9 Ibid s 172(4). As to the removal of a liquidator by the Secretary of State see para 617 post.

10 *Re Sankey Furniture Ltd, ex p Harding, Re Calorifique Ltd, ex p Betts* [1995] 2 BCLC 594 (where the terms imposed attempted to ensure that the creditors were not deprived of their rights under the Insolvency Rules 1986, SI 1986/1925, r 4.108 (see para 609 ante)). See further para 610 notes 5, 6 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

612 Removal of liquidator

NOTE 8--The court should direct that a creditors' meeting must be summoned if the applicant shows that it is in the best interests of the liquidation: *Managa Properties Ltd v Brittain* [2009] EWHC 157 (Ch), [2009] 1 BCLC 689.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/613. Meeting of creditors to remove liquidator.

613. Meeting of creditors to remove liquidator.

Where a meeting of creditors is summoned for the purpose of removing the liquidator, the notice summoning it¹ must indicate that this is the purpose, or one of the purposes, of the meeting; and the notice must draw the attention of creditors to the provisions with respect to the liquidator's release². A copy of the notice must at the same time also be sent to the official receiver³. At the meeting a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman, and a resolution has been proposed for the liquidator's removal, the chairman must not adjourn the meeting without the consent of at least one-half, in value, of the creditors present, in person or by proxy, and entitled to vote⁴.

The chairman, if he is not the official receiver, must within three days send to the official receiver a copy of any resolution passed at the meeting that the liquidator be removed, that a new liquidator be appointed, or that the removed liquidator be not given his release⁵. If it has been resolved to remove the liquidator, the chairman must also send to the official receiver a certificate to that effect⁶. If the creditors have resolved to appoint a new liquidator, the certificate of his appointment must also be sent to the official receiver within that time; and the formalities relating to the certificate of appointment of a liquidator⁷ must be complied with in respect of it⁸.

Where such a meeting of creditors is to be held, or is proposed to be summoned, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control⁹.

1 For the prescribed form of notice to creditors summoning a meeting of creditors see the Insolvency Rules 1986, SI 1986/1925, rr 4.113, 12.7, Sch 4 Form 4.22.

2 Ibid r 4.113(1). As to the provisions with respect to the liquidator's release see the Insolvency Act 1986 s 174(4); and paras 623, 627 post.

3 Insolvency Rules 1986, SI 1986/1925, r 4.113(2). As to the official receiver see para 503 et seq ante.

4 Ibid r 4.113(3). As to the procedure at meetings of creditors generally see para 650 et seq post; and as to the power of the court to regulate such a meeting of creditors see the text and note 9 infra.

5 Ibid r 4.113(4).

6 Ibid r 4.113(4). For the prescribed form of certificate of removal of a liquidator see Sch 4 Form 4.37.

7 Ie ibid r 4.100 (as amended): see para 557 ante.

8 Ibid r 4.113(5).

9 Ibid r 4.115.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/614. Procedure on removal.

614. Procedure on removal.

Where the creditors have resolved that the liquidator be removed, the official receiver¹ must file in court the certificate of removal². The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date must be indorsed on the certificate³. A copy of the certificate, so indorsed, must be sent by the official receiver to the liquidator who has been removed and, if a new liquidator has been appointed, to him⁴.

The official receiver must not file the certificate in court unless and until the Secretary of State has certified to him that the removed liquidator has reconciled his account with that held by the Secretary of State in respect of the winding up⁵.

1 As to the official receiver see para 503 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.116(1). For the meaning of 'file in court' see para 129 note 3 ante.

3 Ibid r 4.116(2).

4 Ibid r 4.116(3).

5 Ibid r 4.116(4). As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

614 Procedure on removal

TEXT AND NOTE 4--SI 1986/1925 r 4.116(3) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/615. Advertisement of removal.

615. Advertisement of removal.

Where a new liquidator is appointed in place of one removed, the former must, in giving notice of his appointment¹, state that his predecessor has been removed and, if it be the case, that he has been given his release².

¹ As to the provisions relating to the giving of notices and advertisement of the appointment of a liquidator see para 557 et seq ante.

² Insolvency Rules 1986, SI 1986/1925, r 4.118. As to the release of a liquidator see para 623 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/616. Removal of liquidator by the court.

616. Removal of liquidator by the court.

The court has a general discretion to remove any liquidator appointed by it¹. Where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing him², the court may, if it thinks that no sufficient cause is shown³ for the application, dismiss it, but it may not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice; if the application is not so dismissed, the court must fix a venue⁴ for it to be heard⁵. The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application⁶. The applicant must, at least 14 days before the hearing, send to the liquidator and the official receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it⁷. Subject to any contrary order of the court, the costs of the application are not payable out of the assets⁸. Where the court removes the liquidator, it must send copies of the order of removal to him and to the official receiver⁹; and the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal¹⁰. If the court appoints a new liquidator, the provisions relating to the appointment of a liquidator by the court¹¹ apply¹².

An application to the court to remove a liquidator must be made by a person with an interest in the outcome of the liquidation¹³. Hence, in an insolvent liquidation, a contributory will not have locus standi to apply¹².

1 See para 612 ante; cf para 984 post (voluntary winding up).

2 For the prescribed form of court order removing a liquidator or directing a liquidator to summon a meeting of creditors for the purpose of his removal see the Insolvency Rules 1986, SI 1986/1925, rr 4.119, 12.7, Sch 4 Form 4.39.

3 Under the Companies Act 1948 s 242(1) (repealed), the liquidator could be removed by the court on cause shown on the application of a creditor or contributory. Thus he might have been removed if the court was satisfied that his removal would be for the general advantage of all who were interested in the company's assets: *Re Adam Eyton Ltd, ex p Charlesworth* (1887) 36 ChD 299, CA; cf *Re Tavistock Iron Works Co* (1871) 24 LT 605 (where proceedings were continued contrary to the creditors' wishes); *Re Rubber and Produce Investment Trust* [1915] 1 Ch 382; *Re Baron Cigarette Machine Co Ltd* (1912) 28 TLR 394; *Re Scotch Granite Co* (1867) 17 LT 533. Though the court did not have a general discretion, its jurisdiction was not confined to cases where there was personal unfitness in the liquidator (see the cases mentioned above), but extended to cases where the unfitness was occasioned by his connection with other parties, or by the circumstances of the particular case: *Re Old Wheal Neptune Mining Co, ex p Pulbrook, ex p Rawlings* (1864) 2 De GJ & Sm 348; *Re Marseilles Extension Rly and Land Co* (1867) LR 4 Eq 692; *Re British Nation Life Assurance Association* (1872) LR 14 Eq 492; *Re Sir John Moore Gold Mining Co* (1879) 12 ChD 325, CA; *Re Charterland Goldfields Ltd* (1909) 26 TLR 132; *Re Amalgamated Properties of Rhodesia Ltd* (1914) 30 TLR 405. In considering whether a liquidator should be removed, importance was attached to such factors as that the majority of the company's creditors would be paid off by a large creditor if his nominee were appointed (*Re Adam Eyton Ltd, ex p Charlesworth* supra) or that the majority was dissatisfied with the existing liquidator (*Re Oxford Building and Investment Co* (1883) 49 LT 495; *Re Land Financiers Association* (1878) 10 ChD 269; cf *Re Civil Service and General Stores* [1884] WN 158). A contributory in arrear to his calls could not apply for a liquidator's removal: *Re Norwich Provident Insurance Society* (1879) 49 LJ Ch 187. The publication of a circular sent by an applicant shareholder to the other shareholders on whose behalf the application was made, setting out the grounds of the application, and asking for their support to the summons, would not be restrained as a contempt of court: *Re New Gold Coast Exploration Co* [1901] 1 Ch 860 (disapproving *Re Crown Bank, Re O'Malley* (1890) 44 ChD 649 and *J & P Coats Ltd v Chadwick* [1894] 1 Ch 347). If the assets belonged substantially to the shareholders, the court, before removing a liquidator, might have directed the wishes of the general body of shareholders to be

ascertained at a general meeting: *Re Consolidated Diesel Engine Manufacturers Ltd* [1915] 1 Ch 192 (where a meeting of shareholders was ordered). It was doubtful whether the court had power as an alternative to removing a liquidator to appoint an additional liquidator to act with him: *Re Consolidated Diesel Engine Manufacturers Ltd* supra. A liquidator could appeal from an order for his removal: *Re Adam Eyton Ltd, ex p Charlesworth* supra. As to appeals see paras 1030-1031 post.

In *Re Corbenstoke Ltd (No 2)* [1990] BCLC 60, 5 BCC 767, a liquidator was removed by the court on an application by a creditor on grounds of conflict of interest. There is a general principle that a liquidator has to act in the interests of the general body of creditors and should not continue in office if the creditors, reasonably, no longer have confidence in his ability to realise the assets of the company to their best advantage and to pursue claims with due diligence: *Re Edennote Ltd, Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, CA. The court will not remove its own officer lightly and will pay due regard to the impact of a removal on his professional standing and reputation: *Re Edennote Ltd* supra. A liquidator may be removed where he has shown insufficient vigour in carrying out his duties: *Re Keypak Homecare Ltd* [1987] BCLC 409, 3 BCC 558.

4 For the meaning of 'venue' see para 91 note 7 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.119(1), (2). As to the making of applications see para 1055 et seq post. The purpose of r 4.119(2) is to filter out applications with no realistic prospect of success: *Re Buildlead Ltd, Quicksons (South and West) Ltd v Katz* [2003] EWHC 1981 (Ch), [2003] 4 All ER 864, [2004] 1 BCLC 83 (decided under the analogous provisions in the context of voluntary winding up: see para 984 post).

6 Insolvency Rules 1986, SI 1986/1925, r 4.119(3). The proper approach to the use of the power under r 4.119(3) is based on merits, and is to be used at the time that the court reaches a decision as to whether the application should proceed to hearing under r 4.119(2); if the court concludes at that stage that the application is arguable but likely to fail, the power to order a deposit or security under r 4.119(3) may then be exercised: *Re Buildlead Ltd, Quicksons (South and West) Ltd v Katz* [2003] EWHC 1981 (Ch), [2003] 4 All ER 864, [2004] 1 BCLC 83 (decided under the analogous provisions in the context of voluntary winding up: see para 984 post).

7 Insolvency Rules 1986, SI 1986/1925, r 4.119(4). As to the official receiver see para 503 et seq ante.

8 Ibid r 4.119(5).

9 Ibid r 4.119(6)(a).

10 Ibid r 4.119(6)(b).

11 Ie those contained in ibid r 4.102: see para 558 ante.

12 Ibid r 4.119(6)(c).

13 *Re Corbenstoke Ltd (No 2)* [1990] BCLC 60, 5 BCC 767. Where a person seeks the exercise of a statutory power, and the statutory power does not specify who may apply for its exercise, as a matter of judicial restraint the court will act only on the application of a person with a sufficient interest in the relief sought: *Deloitte & Touche AG v Johnson* [2000] 1 BCLC 485 (decided under analogous provisions of Cayman Islands law); cf *Walker Morris (a firm) v Khalastchi* [2001] 1 BCLC 1 (where although the applicants were creditors, they made the application in the guise of debtors).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

616 Removal of liquidator by the court

TEXT AND NOTE 8--SI 1986/1925 r 4.119(5) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/617. Removal of liquidator by Secretary of State.

617. Removal of liquidator by Secretary of State.

If the Secretary of State decides to remove the liquidator¹, he must before doing so notify the liquidator and the official receiver of his decision and the grounds of it, and specify a period within which the liquidator may make representations against implementation of the decision². If the Secretary of State directs the removal of the liquidator, he must forthwith file notice of his decision in court³, and send notice to the liquidator and the official receiver⁴. If the liquidator is removed by direction of the Secretary of State, the provisions⁵ as regards the liquidator obtaining his release, as if he had been removed by the court, apply⁶, and the court may make any such order in his case as it would have power to make if he had been so removed⁷.

1 This applies only to a liquidator appointed by the Secretary of State: see the Insolvency Act 1986 s 172(4); and para 612 ante. As to the Secretary of State see para 11 note 10 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.123(1). As to the official receiver see para 503 et seq ante.

3 Ibid r 4.123(2)(a). For the meaning of 'file in court' see para 129 note 3 ante.

4 Ibid r 4.123(2)(b).

5 Ie ibid r 4.121: see para 623 post.

6 Ibid r 4.123(3)(a).

7 Ibid r 4.123(3)(b). As to the court's powers upon a liquidator's removal by the court see r 4.119; and para 616 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/618. Vacancy in office of liquidator.

618. Vacancy in office of liquidator.

A liquidator or provisional liquidator, not being the official receiver¹, must vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company².

Where a final general meeting of the company's creditors has been held³, the liquidator whose report was considered at the meeting must vacate office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions, if any, of the meeting⁴.

1 As to the official receiver see para 503 et seq ante.

2 Insolvency Act 1986 s 172(5). As to insolvency practitioners and their qualification see para 8 et seq ante. Where a liquidator ceases to be qualified to act as an insolvency practitioner, he vacates office automatically, before he has complied with his duties under the Insolvency Rules 1986, SI 1986/1925, r 4.138 (as amended) (see para 622 post): *Re AJ Adams (Builders) Ltd*, *Re Autonational Extended Warranties Ltd* [1991] BCLC 359, [1991] BCC 62 (decided under the identical wording of the Insolvency Act 1986 s 171(4) (see para 988 post) relating to voluntary liquidations); *Re Stella Metals Ltd* [1997] BCC 626, [1997] BPIR 293. As to the official receiver acting during a vacancy see para 510 ante.

3 Ie under the Insolvency Act 1986 s 146: see para 626 post.

4 Ibid s 172(8). As to the liquidator's duties on so vacating office see para 621 et seq post. For the prescribed form of notice of final meeting of creditors to be sent to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 4.43. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

618 Vacancy in office of liquidator

NOTE 12--SI 1986/1925 Sch 4 Form 4.43 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/619. Loss of qualification as insolvency practitioner.

619. Loss of qualification as insolvency practitioner.

Where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company¹, he must forthwith give notice of his doing so to the official receiver, who must give notice to the Secretary of State²; and the official receiver must file in court a copy of his notice³. The provisions as regards the liquidator obtaining his release⁴ apply as if he had been removed by the court⁵.

1 See para 618 ante. As to insolvency practitioners and their qualification see para 8 et seq ante.

2 As to the official receiver see para 503 et seq ante. As to the Secretary of State see para 11 note 10 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.134(1), (2). For the meaning of 'file in court' see para 129 note 3 ante. For the prescribed form of notice to the official receiver by the liquidator see rr 4.134, 12.7, Sch 4 Form 4.45.

4 *Ibid* r 4.121: see para 623 post.

5 *Ibid* r 4.134(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/620. Death of liquidator.

620. Death of liquidator.

Where the liquidator, other than the official receiver, has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death; but this does not apply if notice has been given as follows¹. If the deceased liquidator was a partner in a firm, notice may be given to the official receiver by a partner in the firm who is qualified to act as an insolvency practitioner, or who is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners². Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it³. The official receiver must give notice to the court, for the purpose of fixing the date of the deceased liquidator's release⁴.

1 Insolvent Rules 1986, SI 1986/1925, r 4.132(1). As to the official receiver see para 503 et seq ante.

2 Ibid r 4.132(2). As to persons qualified to act as insolvency practitioners and bodies recognised for the authorisation of insolvency practitioners see para 8 et seq ante. As to the Secretary of State see para 11 note 10 ante.

3 Ibid r 4.132(3).

4 Ibid r 4.132(4). As to the liquidator's release see para 623 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/621. Notice to official receiver of intention to vacate office.

621. Notice to official receiver of intention to vacate office.

Where the liquidator intends to vacate office, whether by resignation or otherwise, he must give notice of his intention to the official receiver together with notice of any creditors' meeting to be held in respect of his vacation of office, including any meeting to receive his resignation¹. The notice to the official receiver must be given at least 21 days before any such creditors' meeting².

Where there remains any property³ of the company which has not been realised, applied, distributed or otherwise fully dealt with in the winding up, the liquidator must include in his notice to the official receiver details of the nature of that property, its value, or the fact that it has no value, its location, any action taken by the liquidator to deal with that property or any reason for his not dealing with it, and the current position in relation to it⁴.

1 Insolvency Rules 1986, SI 1986/1925, r 4.137(1) (r 4.137 substituted by SI 1987/1919). As to such creditors' meetings see para 609 et seq ante. As to the official receiver see para 503 et seq ante. As to the official receiver acting during a vacancy see para 510 ante.

2 Ibid r 4.137(2) (as substituted: see note 1 supra).

3 As to the meaning of 'property' see para 489 note 8 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.137(3) (as substituted: see note 1 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(viii) Resignation, Removal or Vacancy in Office of Liquidator/622. Liquidator's duties on vacating office.

622. Liquidator's duties on vacating office.

Where the liquidator ceases to be in office as such, in consequence of removal¹, resignation² or cesser of qualification as an insolvency practitioner³, he is under obligation forthwith to deliver up to the person succeeding him as liquidator the assets, after deduction of any expenses properly incurred⁴, and distributions made, by him⁵, and further to deliver up to that person the records of the liquidation, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility⁶, and the company's books, papers and other records⁷.

Where the liquidator vacates office following the final meeting of creditors⁸, he must deliver up to the official receiver the company's books, papers and other records which have not already been disposed of in accordance with general regulations⁹ in the course of the liquidation¹⁰.

1 See para 612 et seq ante.

2 See para 609 ante.

3 See para 619 ante. As to insolvency practitioners and their qualification see para 8 et seq ante.

4 Expenses do not include the remuneration of the liquidator unless that remuneration has been fixed under the Insolvency Rules 1986, SI 1986/1925, r 4.127 (see para 589 ante): *Re Salters Hall School Ltd (in liquidation)*, *Merrygold v Horton* [1998] 1 BCLC 401, [1998] BCC 503. Presumably this now extends to remuneration fixed under the Insolvency Rules 1986, SI 1986/1925, rr 4.127A, 4.127B (as added) (see para 590 ante). A liquidator who has retained his remuneration under these provisions is not entitled to keep that remuneration if expenses of equal or greater priority emerge; hence, when the assets of a company were insufficient to pay a liquidator and his successor their remuneration in full, they were entitled to payment *pari passu*: *Re Salters Hall School Ltd (in liquidation)*, *Merrygold v Horton* supra.

5 Insolvency Rules 1986, SI 1986/1925, r 4.138(1).

6 Ibid r 4.138(1)(a).

7 Ibid r 4.138(1)(b).

8 Ie under the Insolvency Act 1986 s 172(8): see para 618 ante.

9 See para 601 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 4.138(3) (added by SI 1987/1919). As to the official receiver see para 503 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

609-622 Resignation, Removal or Vacancy in Office of Liquidator

See SI 1986/1925 Pt 7 Ch 1A (rr 7.10A-7.10D) (block transfer of cases where insolvency practitioner has died etc) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(ix) Release of Liquidator/623. Release of liquidator on removal etc.

(ix) Release of Liquidator

623. Release of liquidator on removal etc.

A person other than the official receiver¹ who has ceased to be a liquidator in a winding up by the court by reason of his resignation, removal², or vacation of office³ has his release as follows. In the case of a person who has been removed from office by a general meeting of the company's creditors that has not resolved against his release or who has died, he has his release with effect from the time at which notice is given to the court that that person has ceased to hold office⁴. In the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release or by the court or by the Secretary of State or who has vacated office by reason of his ceasing to be qualified to act as an insolvency practitioner in relation to the company⁵, he has his release with effect from such time as the Secretary of State may, on an application by that person⁶, determine⁷. In the case of a person who has resigned, where the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release⁸, he has his release from the date when his resignation is effective⁹. Where the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, he must apply to the Secretary of State for his release¹⁰. When the Secretary of State gives the release, he must certify it accordingly, and send the certificate to the official receiver, to be filed in court¹¹. A copy of the certificate must be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate¹².

1 As to the official receiver see para 503 et seq ante.

2 As to resignation see para 609 et seq ante; and as to removal see para 612 et seq ante.

3 See para 618 et seq ante.

4 Insolvency Act 1986 s 174(1), (4)(a). Where the liquidator is removed by a meeting of creditors which has not resolved against his release, the fact of his release must be stated in the certificate of removal: Insolvency Rules 1986, SI 1986/1925, r 4.121(2). As to the rules for giving notice to the court and the certificate of removal where there is a creditors' resolution to remove the liquidator see para 614 ante; and as to the rules for giving notice to the court where the liquidator has died see para 620 ante.

5 I.e. under the Insolvency Act 1986 s 172(5): see para 618 ante. As to insolvency practitioners and their qualification see para 8 et seq ante. As to the Secretary of State see para 11 note 10 ante.

6 For the prescribed form of application see the Insolvency Rules 1986, SI 1986/1925, rr 4.121, 12.7, Sch 4 Form 4.41.

7 Insolvency Act 1986 s 174(1), (4)(b).

8 I.e. under the Insolvency Rules 1986, SI 1986/1925, r 4.109: see para 609 ante.

9 Insolvency Act 1986 s 174(4)(c); Insolvency Rules 1986, SI 1986/1925, r 4.121(1).

10 Insolvency Act 1986 s 174(4)(d); Insolvency Rules 1986, SI 1986/1925, r 4.121(3).

11 Ibid r 4.121(4). For the meaning of 'file in court' see para 129 note 3 ante.

12 Ibid r 4.121(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

623 Release of liquidator on removal etc

NOTE 9--SI 1986/1925 r 4.121(1A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(ix) Release of Liquidator/624. Release of official receiver as liquidator.

624. Release of official receiver as liquidator.

Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release either, in a case where that person was nominated by a general meeting of the company's creditors or contributories or was appointed by the Secretary of State, with effect from the time at which the official receiver gives notice to the court that he has been replaced¹, or, in a case where that person is appointed by the court, with effect from such time as the court may determine².

If the official receiver, while he is a liquidator, gives notice to the Secretary of State that the winding up is for practical purposes complete, he has his release with effect from such time as the Secretary of State may determine³. Before giving such notice, the official receiver must send out notice of his intention to do so to all creditors of which he is aware⁴; and the notice must in each case be accompanied by a summary of the official receiver's receipts and payments as liquidator⁵. When he has determined the date from which the official receiver is to have his release, the Secretary of State must give notice to the court that he has done so; and the notice must be accompanied by the summary of the official receiver's receipts and payments which accompanied the notice to creditors⁶. The court may, on the official receiver's application, relieve him of any of the duties⁷ imposed on him or authorise him to carry out the duty in a way other than that normally required⁸. In considering whether so to act, the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them⁹.

1 See paras 557, 559 ante.

2 Insolvency Act 1986 s 174(1), (2). As to a liquidator's appointment by the court see para 558 ante. As to the official receiver see para 503 et seq ante. As to the Secretary of State see para 11 note 10 ante.

3 Ibid s 174(3). The giving of notice by the official receiver to the Secretary of State pursuant to s 174(3) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 10. As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.124(1) (r 4.124(1) amended, and r 4.125A added, by SI 2004/584).

5 Insolvency Rules 1986, SI 1986/1925, r 4.124(2). The summary of receipts and payments must also include a statement as to the amount paid to unsecured creditors by virtue of the application of the Insolvency Act 1986 s 176A (as added) (share of assets for unsecured creditors: see para 773 post): Insolvency Rules 1986, SI 1986/1925, r 4.124(2A) (added by SI 2003/1730).

6 Insolvency Rules 1986, SI 1986/1925, r 4.124(3).

7 Ie those imposed by ibid r 4.124 (as amended).

8 Ibid r 4.125A(1) (as added: see note 4 supra).

9 Ibid r 4.125A(2) (as added: see note 4 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(ix) Release of Liquidator/625. Release of provisional liquidator.

625. Release of provisional liquidator.

A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine¹.

¹ Insolvency Act 1986 s 174(1), (5). As to provisional liquidators generally see para 491 et seq ante. As to the making of applications see para 1055 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(ix) Release of Liquidator/626. Duty of liquidator to summon final meeting.

626. Duty of liquidator to summon final meeting.

If it appears to the liquidator of a company which is being wound up by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver¹, the liquidator must summon a final general meeting of the company's creditors which must receive the liquidator's report of the winding up, and must determine whether the liquidator should have his release².

The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property³; but, if summoned for an earlier date, that meeting must be adjourned, and, if necessary, further adjourned, until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete⁴.

In the carrying out of his functions in the winding up it is the duty of the liquidator of the company to retain sufficient sums from the company's property to cover the expenses of summoning and holding the final general meeting⁵.

1 As to the official receiver see para 503 et seq ante.

2 Insolvency Act 1986 s 146(1)(a), (b). As to the liquidator's release in these circumstances see para 627 post.

3 See para 829 post.

4 Insolvency Act 1986 s 146(2).

5 Ibid s 146(3). As to the vacation of his office as liquidator after a final general meeting has been held see para 618 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(ix) Release of Liquidator/627. Final meeting of creditors and release of liquidator.

627. Final meeting of creditors and release of liquidator.

Where the liquidator in a winding up by the court is other than the official receiver¹, he must give at least 28 days' notice of the final meeting of creditors². The notice must be sent to all creditors of which the liquidator is aware; and the liquidator must cause it to be gazetted³ at least one month before the meeting is to be held⁴. The liquidator's report laid before the final meeting of creditors must contain an account of the liquidator's administration of the winding up, including a summary of his receipts and payments⁵ and a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up⁶. The report must also include a statement as to the amount paid to unsecured creditors pursuant to the statutory provisions governing distribution of assets to such creditors⁷. At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against him having his release⁸.

The liquidator must give notice to the court⁹ that the final meeting has been held, and the notice must state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting; a copy of the notice must be sent by the liquidator to the official receiver¹⁰. If there is no quorum present at the final meeting¹¹, the liquidator must report to the court that a final meeting was summoned¹², but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors are deemed not to have resolved against the liquidator having his release¹³.

Where a person has vacated office after a final meeting of creditors has been held¹⁴, he has his release, in the case where the final meeting has resolved against his release, with effect from such time as the Secretary of State may, on an application by that person, determine¹⁵, and, if the meeting has not so resolved, the time at which that person vacated office¹⁶.

1 As to the official receiver see para 503 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.125(1). For the prescribed form of notice to creditors of a meeting of creditors see rr 4.125, 12.7, Sch 4 Form 4.22. As to the final meeting of creditors to be held under the Insolvency Act 1986 s 146 see para 626 ante.

3 As to the Gazette, and the gazetting of notices, see para 1048 post.

4 Insolvency Rules 1986, SI 1986/1925, r 4.125(1) (amended by SI 2004/584).

5 Insolvency Rules 1986, SI 1986/1925, r 4.125(2)(a).

6 Ibid r 4.125(2)(b). As to the Secretary of State see para 11 note 10 ante.

7 Ibid r 4.125(2A) (added by SI 2003/1730). As to the statutory provisions governing the distribution of assets to unsecured creditors see the Insolvency Act 1986 s 176A (as added); and para 773 post.

8 Insolvency Rules 1986, SI 1986/1925, r 4.125(3).

9 For the prescribed form of notice see ibid Sch 4 Form 4.42.

10 Ibid r 4.125(4).

11 As to the quorum required at creditors' meetings and the procedure generally see para 650 et seq post.

12 le in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended).

13 Ibid r 4.125(5).

14 le under the Insolvency Act 1986 s 172(8): see para 618 ante.

15 Ibid s 174(4)(d)(i). As to a person obtaining his release from the Secretary of State see the Insolvency Rules 1986, SI 1986/1925, r 4.121; and para 623 ante.

16 Insolvency Act 1986 s 174(4)(d)(ii); Insolvency Rules 1986, SI 1986/1925, r 4.125(6). Under the Insolvency Act 1986 s 172(8), the liquidator vacates office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions, if any, of that meeting, whereas, under the Insolvency Rules 1986, SI 1986/1925, r 4.125(6), the liquidator is stated to be released, where the final meeting has not resolved against his release, when the notice to the court under r 4.125(4) (see the text and notes 9-10 supra) is filed in court: there is no reference to the release taking effect upon the giving of notice to the registrar of companies. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. For the meaning of 'file in court' see para 129 note 3 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

627 Final meeting of creditors and release of liquidator

TEXT AND NOTES--See SI 1986/1925 r 4.49D (final report to creditors) (added by SI 2010/686).

NOTES 2, 7--SI 1986/1925 r 4.125(1A), (2B)-(2D) added: SI 2010/686.

TEXT AND NOTE 10--For 'official receiver' read 'Secretary of State': SI 1986/1925 r 4.125(4) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(7) LIQUIDATOR/(ix) Release of Liquidator/628. Effect of liquidator's release.

628. Effect of liquidator's release.

Where the official receiver or a liquidator or provisional liquidator has his release¹, he is, with effect from the time specified for his release, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator². The court's powers under the provisions giving rise to a summary remedy against delinquent liquidators³ are not, however, affected in relation to a person who has had his release⁴.

¹ Ie under the Insolvency Act 1986 s 174: see para 623 et seq ante. As to the official receiver see para 503 et seq ante. As to provisional liquidators see para 491 et seq ante.

² Ibid s 174(1), (6).

³ Ie under ibid s 212: see para 688 post.

⁴ Ibid s 174(1), (6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/629. Liquidation committee.

(8) LIQUIDATION COMMITTEE

(i) Liquidation Committee in Winding Up by the Court

629. Liquidation committee.

Where a winding-up order has been made by a court in England and Wales and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company¹, those meetings may establish a committee ('the liquidation committee') to exercise the functions conferred on it by or under the Insolvency Act 1986². The acts of the committee so established are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee member's representative or in the formalities of its establishment³.

The liquidator, not being the official receiver, may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it; and the liquidator, not being the official receiver, must summon such a meeting if he is requested⁴ to do so by one-tenth, in value, of the company's creditors⁵.

Where meetings are summoned under these provisions, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee must be established⁶, unless the court otherwise orders⁷.

The liquidation committee is not able or required to carry out its functions at any time when the official receiver is the liquidator of the company⁸.

¹ See para 534 ante.

² Insolvency Act 1986 s 141(1).

³ Insolvency Rules 1986, SI 1986/1925, r 4.172A (added by SI 1987/1919). The Insolvency Rules 1986, SI 1986/1925, r 4.172A (as added) applies to a liquidation committee established for any winding up (r 4.172A (as so added)) and does not preclude the court from investigating the validity of the appointment of the committee (*Re W & A Glaser Ltd* [1994] BCC 199).

⁴ *Ie* in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended). As to requisitioned meetings see r 4.57; and para 652 post.

⁵ Insolvency Act 1986 s 141(2). As to the procedure at such meetings see para 650 et seq post. As to the liquidator see para 555 et seq ante. As to the official receiver see para 503 et seq ante.

⁶ *Ie* in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 630 et seq post.

⁷ Insolvency Act 1986 s 141(3).

⁸ *Ibid* s 141(4). At any such time the functions of the liquidation committee are vested in the Secretary of State except to the extent that the rules otherwise provide: see s 141(4). See further para 517 ante.

Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are similarly vested in the Secretary of State except to the extent that the rules otherwise provide: see s 141(5); and para 517 ante. As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/630. Membership of committee.

630. Membership of committee.

Subject to the provisions relating to a liquidation committee established by contributories¹, the liquidation committee must consist in any case of at least three, and not more than five, creditors of the company, elected by the meeting of creditors², and also, in the case of a solvent winding up³, where the contributories' meeting so decides, of up to three contributories, elected by that meeting⁴. Any creditor of the company, other than one whose debt is fully secured⁵, is eligible to be a member of the committee, so long as he has lodged a proof of his debt, and his proof has neither been wholly disallowed for voting purposes, nor wholly rejected for purposes of distribution or dividend⁶. No person can be a member as both a creditor and a contributory⁷. A body corporate may be a member of the committee, but it cannot act as such otherwise than by a duly appointed representative⁸. Members of the committee elected or appointed to represent the creditors are called 'creditor members'; and those elected or appointed to represent the contributories are called 'contributory members'⁹.

1 Ie the Insolvency Rules 1986, SI 1986/1925, r 4.154 (as amended): see para 632 post.

2 Ie held under the Insolvency Act 1986 s 141: see para 629 ante.

3 For these purposes, 'an 'insolvent winding up' is where the company is being wound up on grounds which include inability to pay its debts (Insolvency Rules 1986, SI 1986/1925, rr 4.151(a), 4.173(2)); and a 'solvent winding up' is where the company is being wound up on grounds which do not include that one (rr 4.151(a), 4.173(2)).

4 Ibid r 4.152(1).

5 As to secured creditors see para 797 et seq post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.152(3). As to proof of debts see para 749 et seq post.

7 Ibid r 4.152(4).

8 Ibid r 4.152(5). As to the appointment of committee members' representatives see r 4.159; and para 636 post.

9 Ibid rr 4.152(6), 4.173(2). Where a representative of the Financial Services Authority exercises the right under the Financial Services and Markets Act 2000 s 371(4)(b) to be a member of the committee (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 500), or a representative of the scheme manager exercises the right under s 215(4) to be a member of the committee (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 586), that person is to be regarded as a creditor member: Insolvency Rules 1986, SI 1986/1925, r 4.152(7) (substituted by SI 2001/3649). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 11 et seq. As to the scheme manager see the Financial Services and Markets Act 2000 s 212(1); and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 583 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/631. Formalities of establishment.

631. Formalities of establishment.

The liquidation committee does not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution¹. If the chairman of the meeting which resolves to establish the committee is not the liquidator, he must forthwith give notice of the resolution to the liquidator (or, as the case may be, the person appointed as liquidator by that same meeting), and inform him of the names and addresses of the persons elected to be members of the committee². No person may act as a member of the committee unless and until he has agreed to do so; and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by a proxy-holder or representative of a corporation³ present at the meeting establishing the committee⁴.

The liquidator's certificate of the committee's due constitution may not issue before the minimum number of persons⁵ who are to be members of the committee have agreed to act⁶. As and when the others, if any, agree to act, the liquidator must issue an amended certificate⁷. The certificate, and any amended certificate, must be filed in court⁸ by the liquidator⁹. If, after the first establishment of the committee, there is any change in its membership, the liquidator must report the change to the court¹⁰.

1 Insolventy Rules 1986, SI 1986/1925, r 4.153(1). For the prescribed form of certificate see rr 4.153, 12.7, Sch 4 Form 4.47. As to the liquidator see para 555 et seq ante.

2 Ibid r 4.153(2).

3 Ie under the Companies Act 1985 s 375.

4 Insolventy Rules 1986, SI 1986/1925, r 4.153(3) (substituted by SI 1987/1919).

5 Ie in accordance with the Insolventy Rules 1986, SI 1986/1925, r 4.152 (as amended): see para 630 ante.

6 Ibid r 4.153(3A) (added by SI 1987/1919).

7 Insolventy Rules 1986, SI 1986/1925, r 4.153(4). For the prescribed form of amended certificate see Sch 4 Form 4.47.

8 For the meaning of 'file in court' see para 129 note 3 ante.

9 Insolventy Rules 1986, SI 1986/1925, r 4.153(5).

10 Ibid r 4.153(7). For the prescribed form of liquidator's report to the court see Sch 4 Form 4.49.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

631 Formalities of establishment

TEXT AND NOTES 3, 4--SI 1986/1925 r 4.153(3) amended: SI 2009/2472.

TEXT AND NOTES 8-10--SI 1986/1925 r 4.153(5), (7) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/632. Committee established by contributories.

632. Committee established by contributories.

Where the creditors' meeting¹ does not decide that a liquidation committee should be established, or decides that a committee should not be established, the meeting of contributories² may appoint one of their number to make application to the court for an order to the liquidator that a further creditors' meeting be summoned for the purpose of establishing a liquidation committee; and the court may, if it thinks that there are special circumstances to justify it, make that order³. If the creditors' meeting so summoned does not establish a liquidation committee, a meeting of contributories may do so⁴. The committee must then consist of at least three, and not more than five, contributories elected by that meeting; and the provisions relating to the formalities of establishment of a committee established by creditors⁵ apply to a committee established by contributories⁶.

1 Ie held under the Insolvency Act 1986 s 141: see para 629 ante.

2 Ie held under *ibid* s 141: see para 629 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.154(1), (2)(a). The creditors' meeting summoned by the liquidator in compliance with the order is deemed to have been summoned under the Insolvency Act 1986 s 141: Insolvency Rules 1986, SI 1986/1925, r 4.154(2)(b). As to the liquidator see para 555 et seq ante.

4 *Ibid* r 4.154(3).

5 Ie *ibid* r 4.153 (as amended): see para 631 ante.

6 *Ibid* r 4.154(4) (amended by SI 1987/1919). In such a case, the reference in the Insolvency Rules 1986, SI 1986/1925, r 4.153(3A) (as added) (see para 631 ante) to the minimum number of persons in accordance with r 4.152 (see para 630 ante) is to be read as a reference to r 4.154(4) (as amended): r 4.154(4) (as so amended).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/633. Obligations of liquidator to committee.

633. Obligations of liquidator to committee.

It is the duty of the liquidator to report to the members of the liquidation committee all such matters as appear to him to be, or as they have been indicated to him as being, of concern to them with respect to the winding up¹. In the case of matters so indicated to him by the committee, the liquidator need not, however, comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive, having regard to the relative importance of the information, or there are not sufficient assets to enable him to comply².

Where the committee has come into being more than 28 days after the appointment of the liquidator, he must report to them, in summary form, what actions he has taken since his appointment, and must answer all such questions as they may put to him regarding his conduct of the winding up hitherto³. A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising⁴.

Nothing in these provisions disentitles the committee, or any member of it, from having access to the liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility⁵.

1 Insolvency Rules 1986, SI 1986/1925, r 4.155(1); *Re W & A Glaser Ltd* [1994] BCC 199. As to the liquidator see para 555 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.155(2).

3 Ibid r 4.155(3).

4 Ibid r 4.155(4).

5 Ibid r 4.155(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/634. Meetings of the committee.

634. Meetings of the committee.

Meetings of the liquidation committee must be held when and where determined by the liquidator¹. The liquidator must, however, call a first meeting of the committee to take place within three months of his appointment or of the committee's establishment, whichever is the later; and thereafter he must call a meeting if so requested by a creditor member² of the committee or his representative, the meeting then to be held within 21 days of the request being received by the liquidator, and for a specified date, if the committee has previously resolved that a meeting be held on that date³.

The liquidator must give seven days' written notice of the venue⁴ of a meeting to every member of the committee or his representative⁵, if designated for that purpose, unless in any case the requirement of the notice has been waived by or on behalf of any member⁶.

1 Insolvent Rules 1986, SI 1986/1925, r 4.156(1). As to the liquidator see para 555 et seq ante.

2 For the meaning of 'creditor member' see para 630 ante.

3 Insolvent Rules 1986, SI 1986/1925, r 4.156(2).

4 For the meaning of 'venue' see para 91 note 7 ante.

5 As to committee members' representatives see the Insolvent Rules 1986, SI 1986/1925, r 4.159 (as amended); and para 636 post.

6 Ibid r 4.156(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

634 Meetings of the committee

NOTE 6--SI 1986/1925 r 4.156(4), (5) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/635. The chairman and quorum at meetings.

635. The chairman and quorum at meetings.

The chairman at any meeting of the liquidation committee must be the liquidator, or a person nominated by him to act¹. A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company², or an employee of the liquidator or his firm who is experienced in insolvency matters³.

A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least two creditor members⁴ are present or represented⁵.

1 Insolvency Rules 1986, SI 1986/1925, r 4.157(1). As to the liquidator see para 555 et seq ante.

2 As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.157(2).

4 For the meaning of 'creditor members' see para 630 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.158(1). As to committee members' representatives see para 636 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/636. Committee members' representatives.

636. Committee members' representatives.

A member of the liquidation committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose¹. A person acting as a committee member's representative must, however, hold a letter of authority entitling him so to act, either generally or specially, and signed by or on behalf of the committee member². The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient³. No member may be represented by a body corporate, or by a person who is an undischarged bankrupt or a disqualified director, or who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking or an interim bankruptcy restrictions order⁴.

No person may act, on the same committee, at one and the same time as representative of more than one committee member, or may act both as a member of the committee and as representative of another member⁵.

Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature⁶.

1 Insolvency Rules 1986, SI 1986/1925, r 4.159(1). As to the role of representatives see *Re W & A Glaser Ltd* [1994] BCC 199.

2 Insolvency Rules 1986, SI 1986/1925, r 4.159(2). For this purpose, any proxy or any authorisation under the Companies Act 1985 s 375 relation to any meeting of creditors, or, as the case may be, members or contributories, of the company is, unless it contains a statement to the contrary, to be treated as such a letter of authority to act generally signed by or on behalf of the committee member: Insolvency Rules 1986, SI 1986/1925, r 4.159(2) (amended by SI 1987/1919).

3 Insolvency Rules 1986, SI 1986/1925, r 4.159(3).

4 Ibid r 4.159(4) (amended by SI 2004/584). See further BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

5 Insolvency Rules 1986, SI 1986/1925, r 4.159(5).

6 Ibid r 4.159(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

636 Committee members' representatives

TEXT AND NOTE 2--SI 1986/1925 r 4.159(2) amended: SI 2009/2472, SI 2010/686.

TEXT AND NOTE 4--SI 1986/1925 r 4.159(4) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/637. Termination of membership and removal.

637. Termination of membership and removal.

A member of the liquidation committee may resign by notice in writing delivered to the liquidator¹.

A person's membership of the liquidation committee is automatically terminated if he becomes bankrupt², or if he is neither present nor represented at three consecutive meetings of the committee (unless at the third of those meetings it is resolved that this provision is not to apply in his case)³. If, however, the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee⁴. The membership of a creditor member⁵ is also automatically terminated if he ceases to be, or is found never to have been, a creditor⁶.

A creditor member of the committee may be removed by resolution at a meeting of creditors; and a contributory member⁷ may be removed by a resolution of a meeting of contributories⁸. In either case, 14 days' notice must be given of the intention to move the resolution⁹.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.160. As to the liquidator see para 555 et seq ante.

2 Ibid r 4.161(1)(a) (amended by SI 2004/584).

3 Insolventcy Rules 1986, SI 1986/1925, r 4.161(1)(b).

4 Ibid r 4.161(2).

5 For the meaning of 'creditor member' see para 630 ante.

6 Insolventcy Rules 1986, SI 1986/1925, r 4.161(3).

7 For the meaning of 'contributory member' see para 630 ante.

8 Insolventcy Rules 1986, SI 1986/1925, r 4.162(1).

9 Ibid r 4.162(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/638. Filling up vacancies.

638. Filling up vacancies.

If there is a vacancy among the creditor members¹ of the committee, the vacancy need not be filled if the liquidator and a majority of the remaining creditor members so agree, provided that the total number of members does not fall below the minimum required². The liquidator may appoint any creditor, being qualified³ to be a member of the committee, to fill the vacancy, if a majority of the other creditor members agree to the appointment, and the creditor concerned consents to act⁴. Alternatively, a meeting of creditors may resolve that a creditor be appointed, with his consent, to fill the vacancy; and, in this case, at least 14 days' notice must have been given of the resolution to make such an appointment, whether or not of a person named in the notice⁵. Where the vacancy is filled by an appointment made by a creditors' meeting at which the liquidator is not present, the chairman of the meeting must report to the liquidator the appointment which has been made⁶.

If there is a vacancy among the contributory members⁷ of the committee, the vacancy need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only⁸, the total number of members does not fall below the minimum required⁹. The liquidator may appoint any contributory member, being qualified¹⁰ to be a member of the committee, to fill the vacancy, if a majority of the other contributory members agree to the appointment, and the contributory concerned consents to act¹¹. Alternatively, a meeting of contributories may resolve that a contributory be appointed, with his consent, to fill the vacancy; and, in this case, at least 14 days' notice must have been given of the resolution to make such an appointment, whether or not of a person named in the notice¹². Where the vacancy is filled by an appointment made by a contributories' meeting at which the liquidator is not present, the chairman of the meeting must report to the liquidator the appointment which has been made¹³.

1 For the meaning of 'creditor members' see para 630 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.163(1), (2). As to the minimum number required see r 4.152 (as amended); and para 630 ante. As to the liquidator see para 555 et seq ante.

3 *Ie* under the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 630 et seq ante.

4 *Ibid* r 4.163(3).

5 *Ibid* r 4.163(4).

6 *Ibid* r 4.163(5).

7 For the meaning of 'contributory members' see para 630 ante.

8 As to a committee of contributory members only see the Insolvency Rules 1986, SI 1986/1925, r 4.154 (as amended), r 4.171; and paras 632, 644 post.

9 *Ibid* r 4.164(1), (2). As to the minimum number required see r 4.154(4) (as amended); and para 632 ante. As to the number required where the creditors have been paid in full see r 4.171(5); and para 644 post.

10 *Ie* under the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 630 et seq ante.

11 *Ibid* r 4.164(3).

12 Ibid r 4.164(4).

13 Ibid r 4.164(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/639. Voting rights and resolutions.

639. Voting rights and resolutions.

At any meeting of the committee, each member of it, whether present himself, or by his representative, has one vote; and a resolution is passed when a majority of the creditor members¹ present or represented have voted in favour of it². The votes of contributory members³ do not count towards the number required for passing a resolution, but the way in which they vote on any resolution must be recorded⁴, except where⁵ the only members of the committee are contributories⁶. In that case, the committee is to be treated for voting purposes as if all its members were creditors⁷. Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting; and the record must be signed by the chairman and kept with the records of the liquidation⁸.

1 For the meaning of 'creditor members' see para 630 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.165(1).

3 For the meaning of 'contributory members' see para 630 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.165(2).

5 Ie by virtue of ibid r 4.154 (as amended) (see para 632 ante) or r 4.171 (see para 644 post).

6 Ibid r 4.165(3).

7 Ibid r 4.165(3).

8 Ibid r 4.165(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/640. Resolutions by post.

640. Resolutions by post.

The liquidator may seek to obtain the agreement of members of the liquidation committee to a resolution by sending to every member, or his representative designated for the purpose, a copy of the proposed resolution¹. Where the liquidator makes use of this procedure, he must send out to members of the committee or their representatives, as the case may be, a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent².

Any creditor member³ of the committee may, within seven business days⁴ from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution⁵. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the creditor members that they concur with it⁶.

A copy of every resolution so passed, and a note that the committee's concurrence was obtained, must be kept with the records of the liquidation⁷.

1 Insolvent Rules 1986, SI 1986/1925, r 4.167(1). As to the liquidator see para 555 et seq ante.

2 Ibid r 4.167(2) (amended by SI 1987/1919).

3 For the meaning of 'creditor member' see para 630 ante.

4 For the meaning of 'business day' see para 113 note 4 ante.

5 Insolvent Rules 1986, SI 1986/1925, r 4.167(3).

6 Ibid r 4.167(5).

7 Ibid r 4.167(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/641. Liquidator's reports.

641. Liquidator's reports.

The liquidator must, as and when directed by the liquidation committee, but not more often than once in any period of two months, send a written report to every member of the committee setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which he, the liquidator, considers the committee's attention should be drawn¹. In the absence of such directions by the committee, the liquidator must send such a report not less often than once in every period of six months².

¹ Insolvency Rules 1986, SI 1986/1925, r 4.168(1). As to the liquidator see para 555 et seq ante.

² Ibid r 4.168(2). The obligations of the liquidator to report under these provisions are without prejudice to those obligations imposed by r 4.155 (see para 633 ante): r 4.168(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/642. Expenses of members etc.

642. Expenses of members etc.

The liquidator¹ must defray out of the assets, in the prescribed order of priority², any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business³.

1 As to the liquidator see para 555 et seq ante.

2 As to the prescribed order of priority of payment out of the assets see the Insolvency Rules 1986, SI 1986/1925, r 4.218 (as amended); and para 810 et seq post.

3 Ibid r 4.169.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

642 Expenses of members etc

TEXT AND NOTES--SI 1986/1925 r 4.169 amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/643. Dealings by committee members and others.

643. Dealings by committee members and others.

Subject to the following provisions, any member of the liquidation committee, any committee member's representative¹, any person who is an associate² of a member of the committee or a committee member's representative, and any person who has been a member of the committee at any time in the last 12 months, may not enter into any transaction whereby he:

- 1082 (1) receives out of the company's assets any payment for services given or goods supplied in connection with the administration³;
- 1083 (2) obtains any profit from the administration⁴; or
- 1084 (3) acquires any asset forming part of the estate⁵.

Such a transaction may, however, be entered into by such a person:

- 1085 (a) with the prior leave of the court⁶;
- 1086 (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and obtains the court's leave for the transaction, having applied for it without undue delay⁷; or
- 1087 (c) with the prior sanction of the liquidation committee where it is satisfied, after full disclosure of the circumstances, that the person will be giving full value in the transaction⁸.

Where, in the committee, a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention of these provisions, no member of the committee, and no representative of a member, may vote if he is to participate directly or indirectly in the transaction⁹.

The court may, on the application of any person interested, set aside a transaction on the ground that it has been entered into in contravention of these provisions, and make with respect to the transaction such other order as it thinks fit, including an order requiring the person who entered into the transaction to account for any profit obtained from the transaction and to compensate the estate for any resultant loss¹⁰. Where a person enters into a transaction in contravention of these provisions as an associate of a member of the committee or of a committee member's representative, the court must not, however, make any such order, if satisfied that he entered into the relevant transaction without having any reason to suppose that, in doing so, he would contravene these provisions¹¹.

The costs of an application to the court for leave under these provisions are not payable out of the assets, unless the court so orders¹².

1 As to committee members' representatives see para 636 ante.

2 For the meaning of 'associate' see para 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.170(1), (2)(a).

4 Ibid r 4.170(1), (2)(b).

- 5 Ibid r 4.170(1), (2)(c).
- 6 Ibid r 4.170(1), (3)(a).
- 7 Ibid r 4.170(1), (3)(b). As to the making of applications see para 1055 et seq post.
- 8 Ibid r 4.170(1), (3)(c).
- 9 Ibid r 4.170(4).
- 10 Ibid r 4.170(5).
- 11 Ibid r 4.170(6).
- 12 Ibid r 4.170(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

643 Dealings by committee members and others

TEXT AND NOTE 3--SI 1986/1925 r 4.170(2)(a) amended: SI 2008/737.

TEXT AND NOTE 12--SI 1986/1925 r 4.170(7) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/644. Composition of committee when creditors paid in full.

644. Composition of committee when creditors paid in full.

If the liquidator issues a certificate¹ that the creditors have been paid in full, with interest², which certificate must forthwith be filed in court³, the creditor members⁴ of the liquidation committee cease to be members of the committee⁵.

The committee continues in being unless and until abolished by decision of a meeting of contributories, and so long as it consists of at least three contributory members⁶. The committee does not, however, cease to exist on account of the number of contributory members falling below three, unless and until 28 days have elapsed since the issue of the liquidator's certificate⁷; but at any time when the committee consists of less than three contributory members, it is suspended and cannot act⁸.

Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee; but the maximum number of members is five⁹.

The provisions relating to liquidation committees¹⁰ continue to apply to the liquidation committee, with any necessary modifications, as if all the members of the committee were creditor members¹¹.

1 For the prescribed form of liquidator's certificate see the Insolvency Rules 1986, SI 1986/1925, rr 4.171, 12.7, Sch 4 Form 4.50. As to the liquidator see para 555 et seq ante.

2 Ie in accordance with the Insolvency Act 1986 s 189: see para 827 post.

3 For the meaning of 'file in court' see para 129 note 3 ante.

4 For the meaning of 'creditor members' see para 630 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.171(1), (2), (4).

6 Ibid r 4.171(5). For the meaning of 'contributory member' see para 630 ante.

7 Ie under ibid r 4.171(1): see the text and notes 1-5 supra.

8 Ibid r 4.171(6).

9 Ibid r 4.171(7).

10 Ie ibid rr 4.151-4.170 (as amended): see para 630 et seq ante.

11 Ibid r 4.171(8).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

644 Composition of committee when creditors paid in full

TEXT AND NOTES--SI 1986/1925 r 4.171 substituted by r 4.171A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(i) Liquidation Committee in Winding Up by the Court/645. Committee's functions vested in Secretary of State.

645. Committee's functions vested in Secretary of State.

At any time when the functions of the liquidation committee are vested in the Secretary of State¹, requirements of the Insolvency Act 1986 or the Insolvency Rules 1986² about notices to be given, or reports to be made, to the committee by the liquidator do not apply, otherwise than as enabling the committee to require a report as to any matter³.

Where the committee's functions are so vested in circumstances where there is for the time being no liquidation committee and the liquidator is a person other than the official receiver⁴, they may be exercised by the official receiver⁵.

1 Ie under the Insolvency Act 1986 s 141(4) or s 141(5): see para 517 ante. As to the Secretary of State see para 11 note 10 ante.

2 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended)).

3 Ibid r 4.172(1). As to the liquidator see para 555 et seq ante.

4 Ie under the Insolvency Act 1986 s 141(5). As to the official receiver see para 503 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.172(2). The functions of the official receiver under r 4.172(2) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 8(a). As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(ii) Liquidation Committee where Winding Up follows Immediately on Administration/646. Continuation of creditors' committee.

(ii) Liquidation Committee where Winding Up follows Immediately on Administration

646. Continuation of creditors' committee.

Where a winding-up order has been made by the court upon an application by an administrator for his appointment to cease to have effect¹, and the court makes an order² appointing as liquidator the person who was previously the administrator³, then any creditors' committee which has been established⁴ for the purposes of the administration continues in being as the liquidation committee for the purposes of the winding up⁵ unless, at the time when the court's order is made, the creditors' committee consists of less than three members; and a creditor who was, immediately before that date, a member of it, ceases to be a member on the making of the order if his debt is fully secured⁶.

1 Ie an application under the Insolvency Act 1986 Sch B1 para 79 (as added): see para 365 et seq ante.

2 Ie under *ibid* s 140(1) (as substituted): see para 558 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.173(1). As to the liquidator see para 555 et seq ante.

4 Ie under the Insolvency Act 1986 Sch B1 para 57 (as added): see para 279 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.174(1) (amended by SI 2003/1730). Where the creditors' committee so continues in being, it is deemed to be a liquidation committee established as such under the Insolvency Act 1986 s 141 (see para 629 ante); and no action may be taken under s 141(1)-(3) (see para 629 ante) to establish any other: Insolvency Rules 1986, SI 1986/1925, r 4.174(1)(a), (b).

6 Ibid r 4.174(2) (amended by SI 2003/1730). As to secured creditors see para 797 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

646 Continuation of creditors' committee

TEXT AND NOTES--SI 1986/1925 r 4.174 substituted by r 4.174A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(ii) Liquidation Committee where Winding Up follows Immediately on Administration/647. Membership of committee and liquidator's certificate.

647. Membership of committee and liquidator's certificate.

Where a winding up follows immediately on administration¹, the liquidation committee must consist of at least three, and not more than five, creditors of the company, elected by the creditors' meeting establishing the creditors' committee² or, in order to make up numbers or fill vacancies, by a creditors' meeting summoned by the liquidator after the company goes into liquidation³. In the case of a solvent winding up⁴, however, the liquidator must, on not less than 21 days' notice, summon a meeting of contributories, in order to elect, if it so wishes, contributory members⁵ of the liquidation committee, up to three in number⁶.

The liquidator must issue a certificate of the liquidation committee's continuance, specifying the persons who are, or are to be, members of it⁷. It must be stated in the certificate whether or not the liquidator has summoned a meeting of the contributories⁸, and whether, if so, the meeting has elected contributories to be members of the committee⁹. Pending the issue of the liquidator's certificate, the committee is suspended and cannot act¹⁰. No person may act, or continue to act, as a member of the committee unless and until he has agreed to do so; and the liquidator's certificate must not issue until at least the minimum number of persons required¹¹ to form a committee have signified their agreement¹². As and when the others signify their agreement, the liquidator must issue an amended certificate¹³. The liquidator's certificate or, as the case may be, the amended certificate, must be filed by him in court¹⁴. If subsequently there is any change in the committee's membership, the liquidator must report the change to the court¹⁵.

1 As to the circumstances under which these provisions apply see para 646 notes 1-3 ante.

2 I.e. the meeting held under the Insolvency Act 1986 Sch B1 para 57 (as added): see para 279 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.175(1) (amended by SI 2003/1730). As to the liquidator see para 555 et seq ante.

4 For the meaning of 'solvent winding up' see para 630 note 3 ante.

5 For the meaning of 'contributory member' see para 630 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 4.175(2).

7 Ibid r 4.176(1). For the prescribed form of certificate see rr 4.176, 12.7, Sch 4 Form 4.52.

8 I.e. under ibid r 4.175(2): see the text and notes 4-6 supra.

9 Ibid r 4.176(2).

10 Ibid r 4.176(3).

11 I.e. under ibid r 4.175: see the text and notes 1-6 supra.

12 Ibid r 4.176(4).

13 Ibid r 4.176(5). For the prescribed form of amended certificate see Sch 4 Form 4.52.

14 Ibid r 4.176(6). For the meaning of 'file in court' see para 129 note 3 ante.

15 Ibid r 4.176(7). For the prescribed form of report see Sch 4 Form 4.49.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

647 Membership of committee and liquidator's certificate

TEXT AND NOTES--SI 1986/1925 r 4.175 revoked, r 4.176 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(ii) Liquidation Committee where Winding Up follows Immediately on Administration/648. Obligations of liquidator to committee.

648. Obligations of liquidator to committee.

As soon as may be after the issue of the liquidator's certificate¹, the liquidator must report to the liquidation committee what actions he has taken since the date on which the company went into liquidation². A person who becomes a member of the committee after that date is not entitled to require a report to him by the liquidator, otherwise than in a summary form, of any matters previously arising³.

Nothing in these provisions disentitles the committee, or any member of it, from having access to the records of the liquidation⁴, whether relating to the period when the liquidator was administrator, or to any subsequent period, or from seeking an explanation of any matter within the committee's responsibility⁵.

1 le under the Insolvency Rules 1986, SI 1986/1925, r 4.176: see para 647 ante. As to the circumstances under which these provisions apply see para 646 notes 1-3 ante. As to the liquidator see para 555 et seq ante.

2 Ibid r 4.177(1).

3 Ibid r 4.177(2).

4 As to the records to be maintained by the liquidator see para 595 et seq ante; and as to those to be maintained by the administrator see para 184 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.177(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(8) LIQUIDATION COMMITTEE/(ii) Liquidation Committee where Winding Up follows Immediately on Administration/649. Application of general provisions relating to the liquidation committee.

649. Application of general provisions relating to the liquidation committee.

Subject to the provisions which have effect in respect of the liquidation committee where winding up follows immediately upon administration¹, the general provisions² relating to a liquidation committee in a winding up by the court (apart from those relating to its establishment) apply³ to the liquidation committee, following the issue of the liquidator's certificate of its continuance⁴.

1 I.e. the Insolvency Rules 1986, SI 1986/1925, rr 4.173-4.177 (as amended): see paras 646-648 ante. As to the circumstances under which these provisions apply see para 646 notes 1-3 ante.

2 I.e. *ibid* rr 4.155-4.172A (as added): see para 629 et seq ante. As to formal defects see para 629 ante.

3 I.e. as if it had been established under the Insolvency Act 1986 s 141 (see para 629 ante).

4 Insolvency Rules 1986, SI 1986/1925, r 4.178 (amended by SI 1987/1919). As to the liquidator's certificate see the Insolvency Rules 1986, SI 1986/1925, r 4.176; and para 647 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/650. Summoning first meetings.

(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES

650. Summoning first meetings.

Meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator in place of the official receiver may be summoned by the official receiver at any time when he is the liquidator of the company¹. It is the duty of the official receiver as soon as practicable in the first 12 weeks beginning with the day on which the winding-up order was made to decide whether to exercise his power to summon such meetings². It is also the duty of the official receiver to summon such meetings of the creditors and contributories if he is at any time requested, in accordance with the rules³, to do so by one-quarter, in value, of the company's creditors⁴. The business at such meetings is limited to specified matters⁵; and rules have been made which have special reference to such meetings⁶.

Meetings so summoned by the official receiver are known respectively as 'the first meeting of creditors' and 'the first meeting of contributories', and jointly as 'the first meetings in the liquidation'⁷.

The provisions relating to meetings⁸ generally apply to all meetings, subject to the express provisions concerning first meetings.

1 See the Insolvency Act 1986 s 136(4); and para 532 ante. As to the liquidator see para 555 et seq ante. As to the official receiver see para 503 et seq ante.

2 See ibid s 136(5)(a); and para 532 ante.

3 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended).

4 See the Insolvency Act 1986 s 136(5)(c); and para 532 ante.

5 See the Insolvency Rules 1986, SI 1986/1925, r 4.52; and para 533 ante.

6 As to summoning such meetings see ibid r 4.50 (as amended), r 4.52; and paras 532-533 ante. As to the choice of liquidator at such meetings see the Insolvency Act 1986 s 139; and para 534 ante. As to voting at the meetings and proxies see para 657 et seq post.

7 Insolvency Rules 1986, SI 1986/1925, r 4.50(7).

8 See paras 653-670 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/651. Meetings ordered by the court.

651. Meetings ordered by the court.

In all matters relating to winding up, the court may have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence; and it may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs¹.

¹ See the Insolvency Act 1986 s 195(1); and para 480 ante. The court may not order meetings to be held where the case is of extreme complexity and the holding of such meetings would be impractical: *Re Bank of Credit and Commerce International SA (No 3)* [1993] BCLC 1490, sub nom *Re Bank of Credit and Commerce International SA (No 2)* [1992] BCC 715, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/652. Meetings called by liquidator; requisitioned meetings.

652. Meetings called by liquidator; requisitioned meetings.

In addition to the first meetings of creditors and contributories¹ and to meetings directed to be held by the court², the official receiver or the liquidator in a winding up by the court may at any time summon and conduct meetings of creditors or of contributories for the purpose of ascertaining their wishes in all matters relating to the liquidation³. It is his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be⁴.

Any such request by creditors or contributories to the liquidator, whether or not the official receiver, for a meeting of creditors or contributories, or meetings of both, to be summoned must be accompanied by:

- 1088 (1) a list of the creditors concurring with the request and the amount of their respective claims (or, in the case of the requisitioning of a contributories' meeting by contributories, the contributories' respective values) in the winding up⁵;
- 1089 (2) written confirmation of his concurrence from each creditor concurring⁶; and
- 1090 (3) a statement of the purpose of the proposed meeting⁷,

although the list of concurring creditors and written confirmation of creditors' concurrence need not be supplied if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors⁸.

The liquidator must, if he considers the request to be properly made⁹, fix a venue¹⁰ for the meeting, not more than 35 days from his receipt of the request¹¹. The liquidator must give 21 days' notice of the meeting, and the venue for it, to creditors (or, in the case of the requisitioning of a contributories' meeting by contributories, those appearing, by the company's books or otherwise, to be contributories' of the company)¹².

The provisions relating to meetings¹³ generally apply to such meetings called by the liquidator, except where and so far as the nature of the subject matter or the context otherwise requires.

1 As to the expression 'the first meetings of creditors and contributories' see para 650 ante.

2 See para 651 ante. As to the delegation to the liquidator of the holding of meetings see paras 480, 588 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.54(1). The person summoning such a meeting is known as 'the convener': r 4.54(1). It is the liquidator's duty to summon meetings of the creditors or contributories where he considers the directions of the committee unwise: see *Re Consolidated Diesel Engine Manufacturers Ltd* [1915] 1 Ch 192. As to the duty to ascertain the wishes of contributories see also *Re Agricultural Industries Ltd* [1952] 1 All ER 1188, CA (desirability of taking proceedings to wind up another company; contributories, who were the persons solely concerned, ought to be consulted). As to the liquidator see para 555 et seq ante. As to the official receiver see para 503 et seq ante.

4 Insolvency Act 1986 s 168(1), (2). The court has jurisdiction to override the duty by directing the liquidator not to comply with it: *Re Barings plc (No 6)*, *Hamilton v Law Debenture Trustees Ltd* [2001] 2 BCLC 159. In considering whether to exercise that jurisdiction, the court applies a two-fold test of whether such a meeting would be conducive to the proper operation of the process of liquidation and to justice as between all those interested in the liquidation: *Re Barings plc (No 6)*, *Hamilton v Law Debenture Trustees Ltd* supra.

5 Insolvency Rules 1986, SI 1986/1925, r 4.57(1)(a), (4)(a). For these purposes, the contributories' respective values are the amounts for which they may vote at any meeting: r 4.57(4)(a). As to contributories' voting rights see paras 664, 668 post. For the prescribed form of request by creditors see rr 4.57, 12.7, Sch 4 Form 4.21. For the prescribed form of request by contributories see Sch 4 Form 4.24. As to the expenses of summoning requisitioned meetings see para 656 post.

6 Ibid r 4.57(1)(b).

7 Ibid r 4.57(1)(c).

8 Ibid r 4.57(1).

9 In accordance with the Insolvency Act 1986. As to the rights of creditors to requisition meetings see the text and notes 1-8 supra; and para 650 ante.

10 For the meaning of 'venue' see para 91 note 7 ante. As to fixing a venue see para 653 post.

11 Insolvency Rules 1986, SI 1986/1925, r 4.57(2). The official receiver may not contract out consideration, pursuant to r 4.57(2), as to whether a request by creditors for a meeting of creditors or contributories or meetings of both has been properly made in accordance with the Insolvency Act 1986, or consideration, pursuant to the Insolvency Rules 1986, SI 1986/1925, r 4.57(2) (as it applies by virtue of r 4.57(4)), as to whether a request by contributories for a meeting of contributories has been properly made in accordance with the Insolvency Act 1986: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 11(a), (b). As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 4.57(3), (4)(b).

13 See paras 653-670 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/653. Mode of summoning meetings.

653. Mode of summoning meetings.

When a venue¹ for the meeting has been fixed, notice of it must be given by the convener², in the case of a creditors' meeting, to every creditor who is known to him or is identified in the company's statement of affairs, and, in the case of a meeting of contributories, to every person appearing, by the company's books or otherwise, to be a contributory of the company³. Notice of the meeting must be given at least 21 days before the date fixed for it, and must specify the purpose of the meeting⁴. The notice must specify a time and date, not more than four days before the date fixed for the meeting, by which, and the place at which, creditors must lodge proofs⁵ and proxies⁶, in order to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies⁷. Additional notice of the meeting may be given by public advertisement if the convener thinks fit, and must be so given if the court orders⁸.

In the case of any meeting of creditors or contributories⁹, the court may order that notice of the meeting be given by public advertisement, and not by individual notice to the persons concerned¹⁰. In considering whether to make such an order, the court must have regard to the cost of public advertisement, to the amount of the assets available, and to the extent of the interest of creditors or of contributories, or any particular class of either of them¹¹.

In fixing the venue for a meeting of creditors or contributories, the convener must have regard to the convenience of the persons, other than whoever is to be chairman¹², who are invited to attend¹³. Meetings must in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day¹⁴, unless the court otherwise directs¹⁵. With every notice summoning a meeting of creditors or contributories, forms of proxy must be sent out¹⁶.

1 For the meaning of 'venue' see para 91 note 7 ante. As to fixing a venue see the text and notes 12-16 *infra*.

2 For the meaning of 'the convener' see para 652 note 3 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.54(2). As to the prescribed forms of notice see rr 4.54, 12.7, Sch 4 Form 4.22 (notice to creditors), Form 4.23 (notice to contributories).

4 *Ibid* r 4.54(3).

5 As to proofs see para 749 *et seq post*.

6 As to proxies see note 16 *infra*.

7 Insolvency Rules 1986, SI 1986/1925, r 4.54(4).

8 *Ibid* r 4.54(6).

9 *Ie* any such meeting to be held under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

10 *Ibid* r 4.59(1).

11 *Ibid* r 4.59(2).

12 As to the chairman at meetings see para 654 *post*.

13 Insolvency Rules 1986, SI 1986/1925, r 4.60(1).

14 For the meaning of 'business day' see para 113 note 4 ante.

15 Insolvency Rules 1986, SI 1986/1925, r 4.60(2).

16 Ibid r 4.60(3). As to the prescribed form of proxy in a winding up by the court see r 12.7, Sch 4 Form 8.4. As to the issue and use of forms of proxy see para 658 post; and as to proxies generally see para 657 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

653 Mode of summoning meetings

TEXT AND NOTES 7-11--SI 1986/1925 r 4.54(6) substituted: SI 2009/642. SI 1986/1925 r 4.54(4) substituted, rr 4.54(7), 4.59(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/654. The chairman at meetings.

654. The chairman at meetings.

In the case of a meeting of creditors and of a meeting of contributories, where the convener of the meeting is the official receiver¹, he, or a person nominated by him, must be the chairman; and a nomination must be in writing, unless the nominee is another official receiver or a deputy official receiver². Where the convener is other than the official receiver, the chairman must be the convener, or a person nominated in writing by him; and a person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company³, or an employee of the liquidator or his firm who is experienced in insolvency matters⁴.

1 For the meaning of 'the convener' see para 652 note 3 ante. As to the official receiver see para 503 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.55(1), (2). The functions of the official receiver as chairman of the first meeting of creditors or the first meeting of contributories by virtue of r 4.55 may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 3(a). As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.55(3)(a). As to insolvency practitioners and their qualification see para 8 et seq ante.

4 Ibid r 4.55(3)(b). As to the liquidator see para 555 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/655. Attendance at meetings of company's personnel.

655. Attendance at meetings of company's personnel.

Whenever a meeting of creditors or of contributories is summoned, the convener¹ must give at least 21 days' notice to such of the company's personnel² as he thinks should be told of, or be present at, the meeting³. If the meeting is adjourned, the chairman of the meeting must, unless for any reason he thinks it unnecessary or impracticable, give notice of the adjournment to such, if any, of the company's personnel as he considers appropriate, being persons who were not themselves present at the meeting⁴. The convener may, if he thinks fit, give notice to any one or more of the company's personnel that he is, or they are, required to be present at the meeting, or to be in attendance⁵.

In the case of any meeting, any one or more of the company's personnel, and any other persons, may be admitted, but they must have given reasonable notice of their wish to be present, and it is a matter for the chairman's discretion whether they are to be admitted or not, and his decision is final as to what, if any, intervention may be made by any of them⁶. If it is desired to put questions to any one of the company's personnel who is not present, the chairman may adjourn the meeting with a view to obtaining his attendance⁷. Where one of the company's personnel is present at a meeting, only such questions may be put to him as the chairman may in his discretion allow⁸.

1 For the meaning of 'the convener' see para 652 note 3 ante.

2 For these purposes, 'the company's personnel' means the persons referred to in the Insolvency Act 1986 s 235(3)(a)-(d) (see para 678 post): Insolvency Rules 1986, SI 1986/1925, r 4.58(2).

3 Ibid r 4.58(1), (2).

4 Ibid r 4.58(3).

5 Ibid r 4.58(4).

6 Ibid r 4.58(5).

7 Ibid r 4.58(6).

8 Ibid r 4.58(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/656. Expenses of summoning meetings.

656. Expenses of summoning meetings.

The expenses of summoning and holding a meeting of creditors or contributories at the instance of any person other than the official receiver or the liquidator must ordinarily be paid by that person, who must deposit with the liquidator security for their payment¹. The sum to be deposited must be such as the official receiver or liquidator, as the case may be, determines to be appropriate; and neither must act without the deposit having been made².

Where a meeting of creditors is so summoned, it may, however, vote that the expenses of summoning and holding it, and of summoning and holding any meeting of contributories requisitioned at the same time, are to be payable out of the assets, as an expense of the liquidation³. Where a meeting of contributories is summoned on the requisition of contributories, it may vote that the expenses of summoning and holding it be payable out of the assets, but subject to the right of creditors to be paid in full, with interest⁴.

To the extent that any deposit made under these provisions is not required for the payment of expenses of summoning and holding a meeting, it must be repaid to the person who made it⁵.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.61(1). As to the official receiver see para 503 et seq ante. As to the liquidator see para 555 et seq ante.

2 Ibid r 4.61(2).

3 Ibid r 4.61(3). As to the priority of payments of expenses in the liquidation see r 4.218 (as amended); and para 810 et seq post.

4 Ibid r 4.61(4).

5 Ibid r 4.61(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

656 Expenses of summoning meetings

TEXT AND NOTE 3--SI 1986/1925 r 4.61(3) amended: SI 2008/737.

TEXT AND NOTE 4--SI 1986/1925 r 4.61(4) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/657. Proxies.

657. Proxies.

A proxy is an authority given by a person ('the principal') to another person ('the proxy-holder') to attend a meeting and speak and vote as his representative¹. Proxies are for use at creditors', company or contributories' meetings².

Only one proxy may be given by a person for any one meeting at which he desires to be represented; and it may only be given to one person, being an individual aged 18 or over; but the principal may specify one or more other such individuals to be proxy-holder in the alternative, in the order in which they are named in the proxy³. A proxy for a particular meeting may be given to whoever is to be the chairman of the meeting⁴; and for a meeting held as part of the proceedings in a winding up by the court it may be given to the official receiver⁵. Where the chairman or official receiver is given such a proxy, he cannot decline to be the proxy-holder in relation to that proxy⁶.

A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion⁷.

1 Insolventcy Rules 1986, SI 1986/1925, r 8.1(1).

2 Ibid r 8.1(2) (amended by SI 1987/1919). The meetings referred to are those summoned or called under the Insolventcy Act 1986 or the Insolventcy Rules 1986, SI 1986/1925 (as amended). As to the prescribed form of proxy in a winding up by the court see rr 8.1, 12.7, Sch 4 Form 8.4.

3 Ibid r 8.1(3).

4 As to the chairman at meetings of creditors and contributories in a winding up by the court see para 654 ante.

5 Insolventcy Rules 1986, SI 1986/1925, r 8.1(4). As to the official receiver see para 503 et seq ante.

6 Ibid r 8.1(5) (substituted by SI 1987/1919).

7 Insolventcy Rules 1986, SI 1986/1925, r 8.1(6) (added by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/658. Issue and use of forms.

658. Issue and use of forms.

When notice is given of a meeting to be held of creditors or contributories, and forms of proxy are sent out with the notice, no form so sent out may have inserted in it the name or description of any person¹; and no form of proxy may be used at any meeting except that which is sent out with the notice summoning the meeting, or a substantially similar form². A form of proxy must be signed by the principal³, or by some person authorised by him, either generally or with reference to a particular meeting; and, if the form is signed by a person other than the principal, the nature of the person's authority must be stated⁴.

1 Insolventcy Rules 1986, SI 1986/1925, r 8.2(1). As to the sending of forms of proxies with the notice of a meeting in a winding up by the court see further para 653 ante.

2 Ibid r 8.2(2).

3 For the meaning of 'the principal' see para 657 ante.

4 Insolventcy Rules 1986, SI 1986/1925, r 8.2(3). A signed proxy sent by fax was held to be a legitimate proxy for the purposes of r 8.2 in the context of individual voluntary arrangements (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 279) and it seems that this applies to all proceedings to which r 8.2 applies: *Re a Debtor (No 2021 of 1995)*, ex p *IRC v Debtor*, *Re a Debtor (No 2022 of 1995)*, ex p *IRC v Debtor* [1996] 2 All ER 345, [1996] 1 BCLC 538.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/659. Use of proxies at meetings.

659. Use of proxies at meetings.

A proxy given for a particular meeting may be used at any adjournment of that meeting¹. Where the official receiver holds proxies for use at any meeting, his deputy, or any other official receiver, may act as proxy-holder in his place²; or alternatively, the official receiver may in writing authorise another officer of the Department of Trade and Industry to act for him at the meeting and use the proxies as if that other officer were himself proxy-holder³. Where the liquidator⁴ holds proxies to be used by him as chairman of a meeting, and some other person acts as chairman, the other person may use the liquidator's proxies as if he were himself proxy-holder⁵.

Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as the liquidator, the proxy-holder may, unless the proxy states otherwise, vote for or against, as he thinks fit, any resolution for the nomination or appointment of that person jointly with another or others⁶.

A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote⁷. Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy⁸.

1 Insolvent Rules 1986, SI 1986/1925, r 8.3(1).

2 For the meaning of 'the proxy-holder' see para 657 ante. As to the official receiver see para 503 et seq ante.

3 Insolvent Rules 1986, SI 1986/1925, r 8.3(2). As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

4 As to the liquidator see para 555 et seq ante.

5 Insolvent Rules 1986, SI 1986/1925, rr 8.3(3), 13.9(1)(a).

6 Ibid r 8.3(4) (added by SI 1987/1919).

7 Insolvent Rules 1986, SI 1986/1925, r 8.3(5) (added by SI 1987/1919).

8 Insolvent Rules 1986, SI 1986/1925, r 8.3(6) (added by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/660. Retention and inspection of proxies.

660. Retention and inspection of proxies.

Proxies used for voting at any meeting must be retained by the chairman of the meeting¹. The chairman must, however, deliver the proxies, forthwith after the meeting, to the liquidator², where that is someone other than himself³.

The liquidator must, so long as proxies lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day⁴, by the creditors⁵, in the case of proxies used at a meeting of creditors, and by a company's contributories, in the case of proxies used at a meeting of contributories⁶. Such right of inspection is also exercisable by the company's directors⁷.

Any person attending a meeting of creditors or contributories is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including proofs, sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor, member or contributory for the purpose of that meeting⁸.

1 Insolventy Rules 1986, SI 1986/1925, r 8.4(1).

2 As to the meaning of 'the liquidator' see para 657 note 2 ante.

3 Insolventy Rules 1986, SI 1986/1925, r 8.4(2).

4 For the meaning of 'business day' see para 113 note 4 ante.

5 For these purposes, 'creditors' means, in the case of a company being wound up by the court, those creditors who have proved their debts, and, in any other case, persons who have submitted in writing a claim to be creditors of the company concerned; but in neither case does it include a person whose proof has been wholly rejected for purposes of voting, dividend or otherwise: Insolventy Rules 1986, SI 1986/1925, r 8.5(2). As to proofs generally see para 749 et seq post. Without prejudice to the generality of the right of a member state liquidator to participate under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolventy proceedings ('the European Regulation on Insolventy Proceedings') art 32(3) (exercise of creditor's rights), a member state liquidator appointed in main proceedings is deemed to be a creditor for the purposes of the Insolventy Rules 1986, SI 1986/1925, r 8.5(1): r 8.8 (added by SI 2002/1307). For the meaning of 'member state liquidator' see para 460 note 15 ante. For the meaning of 'main proceedings' see para 460 note 16 ante. As to the European Regulation on Insolventy Proceedings see para 46 et seq ante.

6 Insolventy Rules 1986, SI 1986/1925, r 8.5(1), 13.9(1)(a).

7 Ibid r 8.5(3)(a).

8 Ibid r 8.5(4) (amended by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

660 Retention and inspection of proxies

NOTE 8--See SI 1986/1925 r 8.5(5) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/661. Proxy-holder with financial interest.

661. Proxy-holder with financial interest.

A proxy-holder¹ may not vote in favour of any resolution which would directly or indirectly place him, or any associate² of his, in a position to receive any remuneration out of the company's assets, unless the proxy specifically directs him to vote in that way³. Where a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in that way, he may nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy⁴. These provisions apply also to any person acting as chairman of a meeting and using proxies in that capacity⁵; and, in its application to him, the proxy-holder is deemed an associate of his⁶.

1 For the meaning of 'the proxy-holder' see para 657 ante.

2 For the meaning of 'associate' see para 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, rr 8.6(1), 13.8(a).

4 Ibid r 8.6(1A) (added by SI 1987/1919).

5 Ie under the Insolvency Rules 1986, SI 1986/1925, r 8.3 (as amended): see para 659 ante.

6 Ibid r 8.6(2) (amended by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/662. Rule against solicitation.

662. Rule against solicitation.

Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration out of the assets be allowed to any person by whom, or on whose behalf, the solicitation was exercised¹. Such an order of the court overrides any resolution of the liquidation committee² or the creditors, or any other provision³ relating to the liquidator's remuneration⁴.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.150(1).

2 As to the liquidation committee see para 629 et seq ante.

3 le of the Insolventcy Rules 1986, SI 1986/1925 (as amended).

4 Ibid r 4.150(2). As to the provisions relating to the liquidator's remuneration see para 589 et seq ante. As to the offence of corrupt inducement affecting an appointment as liquidator see para 2323 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

662 Rule against solicitation

TEXT AND NOTE 1--SI 1986/1925 r 4.150(1) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/663. Company representation.

663. Company representation.

Where a person is authorised¹ to represent a corporation at a meeting of creditors or of its contributories, he must produce to the chairman of the meeting a copy of the resolution from which he derives his authority². The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy³. Nothing in these provisions requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation⁴.

1 Ie under the Companies Act 1985 s 375.

2 Insolvency Rules 1986, SI 1986/1925, r 8.7(1).

3 Ibid r 8.7(2).

4 Ibid r 8.7(3) (added by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

663 Company representation

TEXT AND NOTES--If a corporation is a creditor or debenture-holder, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives at any meeting of the creditors of a company held in pursuance of the Insolvency Act 1986 or of rules made under it, or at any meeting of a company held in pursuance of the provisions contained in a debenture or trust deed: s 434B(1) (s 434B added by SI 2008/948). Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder: 1986 Act s 434B(2). Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder: s 434B(3). Where the corporation authorises more than one person and more than one of them purport to exercise a power under s 434B(3) if they purport to exercise the power in the same way, the power is treated as exercised in that way; if they do not purport to exercise the power in the same way, the power is treated as not exercised: s 434B(4).

TEXT AND NOTES 1, 2--SI 1986/1925 r 8.7(1) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/664. Resolutions.

664. Resolutions.

At a meeting of creditors or contributories, a resolution is passed when a majority, in value, of those present and voting, in person or by proxy, have voted in favour of the resolution; and the value of contributories is determined by reference to the number of votes conferred on each contributory by the company's articles¹.

However, in the case of a resolution for the appointment of a liquidator:

- 1091 (1) if on any vote there are two nominees for appointment, the person who obtains the most support is appointed²;
- 1092 (2) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed³; and
- 1093 (3) in any other case, the chairman of the meeting must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee⁴.

The chairman may at any time put to the meeting a resolution for the joint appointment of any two or more nominees⁵.

Where a resolution is proposed which affects a person in respect of his remuneration or conduct as liquidator, or as proposed or former liquidator, the vote of that person, and of any partner or employee of his, must not be reckoned in the majority required for passing the resolution; and this applies with respect to a vote given by a person, whether personally or on his behalf by a proxy-holder, either as creditor or contributory or as proxy-holder for a creditor or a contributory but is subject to the provisions⁶ relating to proxy-holders with a financial interest⁷.

Where the chairman at a meeting of creditors or contributories holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution, he must himself propose it, unless he considers that there is good reason for not doing so; and, if he does not propose it, he must forthwith after the meeting notify his principal of the reason why not⁸.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.63(1) (amended by SI 1987/1919).

2 Insolventcy Rules 1986, SI 1986/1925, r 4.63(1) (amended by SI 1987/1919). In a winding up by the court, the support referred to must represent a majority in value of all those present, in person or by proxy, at the meeting and entitled to vote: Insolventcy Rules 1986, SI 1986/1925, r 4.63(2A) (added by SI 1987/1919).

3 Insolventcy Rules 1986, SI 1986/1925, r 4.63(2)(b).

4 Ibid r 4.63(2)(c).

5 Ibid r 4.63(3).

6 Ie ibid r 8.6 (as amended): see para 661 ante.

7 Ibid r 4.63(4) (amended by SI 1987/1919).

8 Insolventcy Rules 1986, SI 1986/1925, r 4.64.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

664 Resolutions

TEXT AND NOTES--See SI 1986/1925 r 4.63A (resolutions by correspondence) (added by SI 2010/686).

NOTE 2--SI 1986/1925 r 4.63(2A) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/665. Date of resolution.

665. Date of resolution.

Where a resolution is passed at an adjourned meeting of any creditors or contributories¹ of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date².

1 Or, in the case of a winding up in relation to a limited liability partnership, the members of the partnership: see the Insolvency Act 1986 s 194; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Insolvency Act 1986 s 194. Cf COMPANIES vol 14 (2009) PARA 650.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/666. Suspension and adjournment of meetings.

666. Suspension and adjournment of meetings.

Once only in the course of any meeting of creditors or of contributories the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour¹.

The chairman at any such meeting may in his discretion, and must, if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances². If, within a period of 30 minutes from the time appointed for the commencement of a meeting, a quorum³ is not present, the chairman may, at his discretion, adjourn the meeting to such time and place as he may appoint⁴. Any such adjournment may not be for a period of more than 21 days; and the provisions relating to the fixing of a venue for meetings⁵ apply⁶.

If there is no person present to act as chairman, some other person present, being entitled to vote, may make the appointment for the adjourned meeting with the agreement of others present, being persons so entitled; and, failing agreement, the adjournment must be to the same time and place in the next following week or, if that is not a business day⁷, to the business day immediately following⁸.

Where a meeting is so adjourned, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting⁹.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.65(1), (2).

2 Ibid r 4.65(3). This is subject to r 4.113(3) (see para 613 ante) in a case where the liquidator or his nominee is chairman, and a resolution has been proposed for the liquidator's removal: r 4.65(3). In the case of a creditors' voluntary winding up it is subject to r 4.114(3) (see para 985 post): r 4.65(3) (amended by SI 1987/1919).

3 As to the quorum see para 667 post.

4 Insolventcy Rules 1986, SI 1986/1925, r 4.65(4) (amended by SI 1987/1919).

5 Ie the Insolventcy Rules 1986, SI 1986/1925, r 4.60(1), (2): see para 653 ante.

6 Ibid r 4.65(5).

7 For the meaning of 'business day' see para 113 note 4 ante.

8 Insolventcy Rules 1986, SI 1986/1925, r 4.65(6).

9 Ibid r 4.65(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

666 Suspension and adjournment of meetings

TEXT AND NOTES 7, 8--SI 1986/1925 r 4.65(6) substituted by r 4.65(6A)-(6C): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/667. Quorum.

667. Quorum.

Any meeting of creditors or contributories¹ is competent to act if a quorum is present². A quorum is:

- 1094 (1) in the case of a creditors' meeting, at least one creditor entitled to vote³; and
- 1095 (2) in the case of a meeting of contributories, at least two contributories so entitled, or all the contributories, if their number does not exceed two⁴.

For these purposes, however, the reference to the creditor or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person, including the chairman, and includes duly authorised representatives of corporations⁵.

Where, at any meeting of creditors or contributories, these provisions as to a quorum being present are satisfied by the attendance of the chairman alone, or one other person in addition to the chairman, and the chairman is aware, by virtue of proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote, the meeting may not commence until at least the expiry of 15 minutes after the time appointed for its commencement⁶.

¹ These provisions apply to all company insolvency proceedings: Insolvency Rules 1986, SI 1986/1925, r 12.4A(1) (r 12.4A added by SI 1987/1919).

² Insolvency Rules 1986, SI 1986/1925, r 12.4A(1) (as added: see note 1 supra).

³ Ibid r 12.4A(2)(a) (as added: see note 1 supra). As to creditors' entitlement to vote see para 668 et seq post.

⁴ Ibid r 12.4A(2)(b) (as added: see note 1 supra).

⁵ Ibid r 12.4A(3) (as added: see note 1 supra). As to authorised representatives of corporations see the Companies Act 1985 s 375; para 663 ante; and COMPANIES vol 14 (2009) PARA 661.

⁶ Insolvency Rules 1986, SI 1986/1925, r 12.4A(4) (as added: see note 1 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

667 Quorum

TEXT AND NOTE 5--SI 1986/1925 r 12.4A(3) amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/668. Entitlement to vote of creditors and contributories; lodging of proofs.

668. Entitlement to vote of creditors and contributories; lodging of proofs.

At a meeting of creditors in a winding up by the court, a person is entitled to vote as a creditor only if:

- 1096 (1) there has been duly lodged by the time and date stated in the notice of the meeting¹, a proof of the debt claimed to be due to him from the company², or in relation to a member state liquidator³, is claimed to be due to creditors in proceedings in relation to which he holds office, and the claim has been admitted⁴ for the purpose of entitlement to vote⁵; and
- 1097 (2) there has been lodged by the time and date stated in the notice of the meeting, any proxy⁶ requisite for that entitlement⁷.

The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts; and, where a creditor is so entitled, the court may, on the application of the liquidator, make such consequential orders as it thinks fit, as, for example, an order treating a creditor as having proved his debt for the purpose of permitting payment of a dividend⁸.

A creditor may not vote in respect of a debt for an unliquidated amount⁹, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits his proof for that purpose¹⁰.

A secured creditor¹¹ is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security as estimated by him¹².

A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing:

- 1098 (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands¹³; and
- 1099 (b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof¹⁴.

No vote may be cast by virtue of a debt more than once on any resolution put to the meeting¹⁵.

Where a creditor is entitled to vote under these provisions and the claim has been admitted for the purposes of entitlement to vote¹⁶, and he has lodged his claim in one or more sets of other proceedings in another member state and votes, either in person or by proxy, on a resolution put to the meeting, only the creditor's vote will be counted¹⁷.

Where a creditor has lodged his claim in more than one set of other proceedings and more than one member state liquidator seeks to vote by virtue of that claim, the entitlement to vote by virtue of that claim is exercisable by the member state liquidator in main proceedings, whether or not the creditor has lodged his vote in the main proceedings¹⁸.

At a meeting of contributories, voting rights are as at a general meeting of the company¹⁹, subject to any provision in the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation²⁰.

The chairman's decision in respect of any matter arising under these provisions is subject to appeal to the court by any creditor or contributory²¹.

1 As to notice of the meeting see para 653 ante.

2 As to proofs of debt see para 749 et seq post.

3 For the meaning of 'member state liquidator' see para 460 note 15 ante.

4 *Ie* under the Insolvency Rules 1986, SI 1986/1925, r 4.70: see para 669 post.

5 *Ibid* r 4.67(1)(a) (amended by SI 2002/1307).

6 As to proxies see para 657 et seq ante.

7 Insolvency Rules 1986, SI 1986/1925, r 4.67(1)(b).

8 *Ibid* r 4.67(2).

9 'Unliquidated debt' includes not only all cases of damages to be ascertained, but also extends to any debt where the creditor fairly admits that he cannot state the amount: see *Re Canadian Pacific Colonization Corpn Ltd* (1891) 40 WR 40 at 41, distinguishing and explaining *Re Dummelow, ex p Ruffle* (1873) 8 Ch App 997. For the meaning of 'debt' see para 749 post.

10 Insolvency Rules 1986, SI 1986/1925, r 4.67(3). As to the operation of r 4.67 (as amended) in practice see *Re a Debtor (No 222 of 1990), ex p Bank of Ireland* [1992] BCLC 137 (decided under the similar wording in the Insolvency Rules 1986, SI 1986/1925, r 5.17(3) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 101)). A claim against the company for specific moneys had and received, coupled with a claim that the company became constructive trustee of the moneys, was neither a claim 'in respect of any unliquidated or contingent debt or any debt the value of which is unascertained' nor a claim of a 'secured creditor' within the Companies (Winding-up) Rules 1949, SI 1949/330, rr 140, 141 (revoked): *Re Prime Metal Trading Ltd* [1984] BCLC 543. The rule has been held to apply to a subordinated claim when the amount payable depended on payment in full to other creditors in the first instance and hence the amount payable to the subordinated creditor was neither liquidated nor ascertained: *Re Barings plc (No 6), Hamilton v Law Debenture Trustees Ltd* [2001] 2 BCLC 159.

11 As to secured creditors see para 797 et seq post.

12 Insolvency Rules 1986, SI 1986/1925, r 4.67(4). As to proprietary claims see *Re Prime Metal Trading Ltd* [1984] BCLC 543.

13 Insolvency Rules 1986, SI 1986/1925, r 4.67(5)(a).

14 *Ibid* r 4.67(5)(b).

15 *Ibid* r 4.67(6) (r 4.67(6)-(9) added by SI 2002/1307).

16 *Ie* under the Insolvency Rules 1986, SI 1986/1925, r 4.70: see para 669 post.

17 *Ibid* r 4.67(7) (as added: see note 15 supra) 'Other proceedings' means main proceedings, secondary proceedings or territorial proceedings in another member state: r 4.67(9) (as so added). For the meaning of 'main proceedings' see para 460 note 16 ante. 'Secondary proceedings' means proceedings opened in accordance with EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 3(2), (3) and falling within the definition of 'winding-up proceedings' in art 2(c) and set out in Annex B under either the heading 'United Kingdom' (in relation to England and Wales and Scotland) or that relating to another member state (in relation to another member state): Insolvency Rules 1986, SI 1986/1925, r 13.13(12) (added by SI 2002/1307). 'Territorial proceedings' means proceedings opened in accordance with the European Regulation on Insolvency Proceedings arts 3(2), (4) and falling within the definition of insolvency proceedings in art 2(a) and set out in Annex A under either the heading 'United Kingdom' (in relation to England and Wales and Scotland) or that relating to another member state (in relation to another member state): Insolvency Rules 1986, SI 1986/1925, r 13.13(14) (added by SI

2002/1307). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. For the meaning of 'United Kingdom' see para 12 note 2 ante.

18 Insolvency Rules 1986, SI 1986/1925, r 4.67(8) (as added: see note 15 supra).

19 See COMPANIES vol 14 (2009) PARA 661.

20 Insolvency Rules 1986, SI 1986/1925, r 4.69.

21 Ibid r 4.70(2). As to appeals see para 1030 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/669. Admission and rejection of proof.

669. Admission and rejection of proof.

At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof¹. The chairman's decision under this provision is subject to appeal to the court by any creditor or contributory². If the chairman is in doubt whether a proof should be admitted or rejected, he must mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the proof is sustained³.

If, on an appeal, the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just⁴. Neither the official receiver, nor any person nominated by him to be chairman, is personally liable for costs incurred by any person in respect of an application under these provisions; and the chairman, if other than the official receiver or a person so nominated, is not so liable, unless the court makes an order to that effect⁵.

1 Insolvency Rules 1986, SI 1986/1925, r 4.70(1). As to proofs of debt see para 749 et seq post.

2 Ibid r 4.70(2). As to appeals see para 1030 et seq post.

3 Ibid r 4.70(3).

4 Ibid r 4.70(4). The task of the court on the appeal is to assess the evidence which was before the court and is not confined to the evidence which was before the chairman: *Re a Company (No 004539 of 1993)* [1995] 1 BCLC 459, [1995] BCC 116; *Re Assico Engineering Ltd (in liquidation)* [2002] BCC 481, [2002] BPIR 15.

5 Insolvency Rules 1986, SI 1986/1925, r 4.70(5). As to the official receiver see para 503 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

669 Admission and rejection of proof

NOTE 4--SI 1986/1925 r 4.70(4A) added: SI 2010/686. See *Re Power Builders (Surrey) Ltd; Power v Petrus Estates Ltd* [2008] EWHC 2607 (Ch), [2009] 1 BCLC 250 (further meeting not appropriate).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/670. Record of proceedings.

670. Record of proceedings.

At any meeting, the chairman must cause minutes of the proceedings to be kept; and the minutes must be signed by him, and retained as part of the records of the liquidation¹. The chairman must also cause to be made up and kept a list of all the creditors or, as the case may be, contributories who attended the meeting². The minutes of the meeting must include a record of every resolution passed³. It is the chairman's duty to ensure that particulars of all such resolutions, certified by him, are filed in court⁴ not more than 21 days after the date of the meeting⁵.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.71(1).

2 Ibid r 4.71(2).

3 Ibid r 4.71(3).

4 For the meaning of 'file in court' see para 129 note 3 ante.

5 Insolventcy Rules 1986, SI 1986/1925, r 4.71(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

670 Record of proceedings

TEXT AND NOTES 4, 5--SI 1986/1925 r 4.71(4) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(9) MEETINGS OF CREDITORS AND CONTRIBUTORIES/671. Additional provisions as regards certain meetings in winding up of authorised institutions etc.

671. Additional provisions as regards certain meetings in winding up of authorised institutions etc.

Where the company being wound up by the court is an authorised deposit-taker¹ or former authorised deposit-taker², notice of the first meetings of creditors and contributories³ must be given to the Financial Services Authority⁴ and the scheme manager⁵ by the official receiver⁶.

Where in the winding up of such a company a meeting of creditors or contributories or of the company is summoned for the purpose of receiving the liquidator's resignation⁷, removing the liquidator⁸, or appointing a new liquidator⁹, the person summoning the meeting and giving notice of it must also give notice to the Financial Services Authority and the scheme manager¹⁰.

The scheme manager is entitled to be represented at any meeting of which it is entitled to be given notice¹¹, and in relation to any such meeting may submit in the liquidation, instead of a proof, a written statement of voting rights¹². Such statement must contain details of:

- 1100 (1) the names of creditors of the company in respect of whom an obligation of the scheme manager has arisen or may reasonably be expected to arise as a result of the liquidation or proposed liquidation¹³;
- 1101 (2) the amount of the obligation so arising¹⁴; and
- 1102 (3) the total amount of all such obligations specified in the statement¹⁵.

The scheme manager's statement is, for the purpose of voting at a meeting, but for no other purpose, to be treated in all respects as if it were a proof¹⁶.

Any voting rights which a creditor might otherwise exercise at a meeting in respect of a claim against the company are reduced by a sum equal to the amount of that claim in relation to which the scheme manager, by virtue of its having submitted a statement, is entitled to exercise voting rights at that meeting¹⁷. The scheme manager may from time to time submit a further statement, and, if it does so, that statement supersedes any statement previously submitted¹⁸.

1 For the meaning of 'authorised deposit-taker' see para 460 note 18 ante.

2 For the meaning of 'former authorised deposit-taker' see para 460 note 19 ante.

3 As to the first meetings of creditors and contributories see para 650 ante.

4 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

5 As to the scheme manager see the Financial Services Authority under the Financial Services and Markets Act 2000 s 212(1); and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 583 et seq.

6 Insolvency Rules 1986, SI 1986/1925, r 4.72(1), (5) (amended by SI 1998/1129; SI 2001/3649). As to the official receiver see para 503 et seq ante.

7 Insolvency Rules 1986, SI 1986/1925, r 4.72(6)(a). See para 609 ante.

8 Ibid r 4.72(6)(b). See para 613 ante.

9 Ibid r 4.72(6)(c). See para 557 ante.

10 Ibid r 4.72(6) (amended by SI 1998/1129; SI 2001/3649). This provision also applies in the case of a company being wound up voluntarily: Insolvency Rules 1986, SI 1986/1925, r 4.72(6) (as so amended). As to the appointment of liquidators in a voluntary winding up see para 950 et seq post; and as to their resignation or removal see para 980 et seq post.

11 Ibid r 4.72(7) (amended by SI 2001/3649). This provision also applies in the case of a company being wound up voluntarily: Insolvency Rules 1986, SI 1986/1925, r 4.72(6) (as amended: see note 10 supra), r 4.72(7) (as so amended). As to voluntary winding up generally see para 939 et seq post.

12 Ibid r 4.72(7) (as amended: see note 11 supra), Sch 1 paras 1, 2 (Sch 1 paras 2, 3(a), 4-6 amended by SI 2001/3649).

13 Insolvency Rules 1986, SI 1986/1925, Sch 1 para 3(a) (as amended: see note 12 supra).

14 Ibid Sch 1 para 3(b).

15 Ibid Sch 1 para 3(c).

16 Ibid Sch 1 para 4 (as amended: see note 12 supra).

17 Ibid Sch 1 para 5 (as amended: see note 12 supra).

18 Ibid Sch 1 para 6 (as amended: see note 12 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(i) In general/672. Assets in winding up.

(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES

(i) In general

672. Assets in winding up.

On the winding up of a company, all its assets, other than assets which it holds as trustee¹, are collected and realised and applied in payment of its debts; and, when these are satisfied, in returning to its members the sums which they have contributed to the company, or paying them other money due to them in their character of members.

Besides the company's ordinary property, the assets include all contributions which the liquidator is entitled to obtain from members or persons who have been members within a certain time before the winding up commenced², and all assets which have been misappropriated as against creditors and which a creditor has a right to have recouped³. All these assets form a common fund⁴ to be applied in the manner directed by the Insolvency Act 1986 after the claims of the secured creditors⁵ have been met. The latter are not, however, bound to avail themselves of the winding-up proceedings, but may, with the leave of the court, pursue the remedies which they possessed before it commenced⁶.

Subject to the rights of the secured creditors and of certain creditors to be paid in priority, the assets in winding up are subject to a statutory trust for the benefit of all the creditors to the extent of their debts, and must be distributed upon the footing of equality⁷.

1 See eg *Re Independent Air Travel Ltd* [1961] 1 Lloyd's Rep 604; *Re Kayford Ltd* [1975] 1 All ER 604, [1975] 1 WLR 279, CA; *Re Multi-Guarantee Co Ltd* [1987] BCLC 257, CA; *Re Fleet Disposal Services Ltd, Spratt v AT & T Automotive Services Ltd* [1995] 1 BCLC 345, [1995] BCC 605; *Re Lewis's of Leicester Ltd* [1995] 1 BCLC 428, [1995] BCC 514; *Re Harvard Securities Ltd (in liquidation), Holland v Newbury* [1997] 2 BCLC 369, [1998] BCC 567. Bequests to a charitable company which enters liquidation are assets of the company to be distributed in accordance with the statutory scheme: *Re ARMS (Multiple Sclerosis Research) Ltd, Alleyne v A-G* [1997] 2 All ER 679, [1997] BCC 370. Deposits paid by customers to an insolvent holiday company formed part of the company's assets, since in the absence of agreement between the parties preventing the funds from forming part of the company's general assets, they were not to be treated as held on trust for the customers: *Re Holiday Promotions (Europe) Ltd* [1996] 2 BCLC 618, [1996] BCC 671.

2 See para 704 et seq post.

3 Cf *Re Mercantile Trading Co, Stringer's Case* (1869) 4 Ch App 475 at 496. As to misfeasance proceedings see eg para 688 et seq post. As to avoidance of transactions at an undervalue and preferences see para 843 et seq post. As to repayment of dividend paid out of capital see COMPANIES vol 14 (2009) PARA 1407.

4 *Webb v Whiffin* (1872) LR 5 HL 711 at 720, 724; *Re Blakely Ordnance Co, Brett's Case, Re Oriental Commercial Bank, Morris' Case* (1873) 8 Ch App 800. As to the liquidator's duty to collect see para 574 ante.

5 For the meaning of 'secured creditor' see para 109 note 10 ante.

6 See para 895 post.

7 *Ayerst (Inspector of Taxes) v C & K (Construction) Ltd* [1976] AC 167, [1975] 2 All ER 537, HL (company ceases to have beneficial ownership of assets after it has gone into liquidation); *Re Oriental Inland Steam Co, ex p Scinde Rly Co* (1874) 9 Ch App 557; *Re MC Bacon Ltd* [1991] Ch 127, [1990] 3 WLR 646 (proceeds of claims

under the Insolvency Act 1986 s 214 (wrongful trading: see para 914 post) and s 239 (preferences: see para 846 et seq post) are received by the liquidator impressed with a trust for the benefit of the creditors); *Re Oasis Merchandising Services Ltd*, *Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA; *Lewis v IRC* [2001] 3 All ER 499, [2001] 2 BCLC 392, CA; and see *Re Smith, Knight & Co, ex p Ashbury* (1868) LR 5 Eq 223. As to the position of the Crown see para 762 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(i) In general/673. Company's rights against insurers.

673. Company's rights against insurers.

Where, under any contract of insurance¹, a company is insured against liabilities to third parties which it may incur, then, in the event of a winding-up order being made², if either before or after that event it incurs any such liability, its rights against the insurer under the contract in respect of the liability are transferred to, and vest in, the third party to whom the liability was so incurred³.

Where the Secretary of State has entered into an agreement for the reinsurance of a ship, aircraft or cargo against war risk and the original insurer or any intermediate insurer commences to be wound up, any sum payable by the Secretary of State or any intermediate insurer subsequent to that insurer must be paid direct to the assured and the assured's right to receive payment from that insurer is extinguished to the extent to which the risk has been so insured⁴.

1 The Third Parties (Rights against Insurers) Act 1930 does not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company: see s 1(6)(a); and INSURANCE vol 25 (2003 Reissue) para 679.

2 See *ibid* s 1(1)(b) (as amended); and INSURANCE vol 25 (2003 Reissue) para 679. Section 1(1) (as amended) also applies in the event of a resolution for a voluntary winding-up order being passed in respect of the company (see para 939 *et seq post*), the company entering administration (see para 145 *et seq ante*) or a voluntary arrangement proposed for the purposes of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 *et seq ante*) being approved thereunder: see the Third Parties (Rights against Insurers) Act 1930 s 1(1) (b) (as amended); and INSURANCE vol 25 (2003 Reissue) para 679. As to the application of this provision where a receiver is appointed see COMPANIES vol 15 (2009) PARA 1354.

3 See *ibid* s 1(1); and INSURANCE vol 25 (2003 Reissue) para 679. As to the effect of this provision in relation to the jurisdiction to wind up foreign companies see para 1157 *post*; and as to the right of proof where the liability of the insurer is less than the liability of the company see para 755 *post*. In the case of compulsory motor vehicle insurance, the transfer of rights against the insurer by virtue of the Third Parties (Rights against Insurers) Act 1930 does not affect the company's liability to the third party: see the Road Traffic Act 1988 s 153 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) para 953.

4 See the Marine and Aviation Insurance (War Risks) Act 1952 s 4; and INSURANCE vol 25 (2003 Reissue) para 813. As to the Secretary of State see para 11 note 10 *ante*.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

673 Company's rights against insurers

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(i) In general/674. Non-vesting of assets in liquidator.

674. Non-vesting of assets in liquidator.

Winding up differs from bankruptcy in this respect, that in bankruptcy the whole estate, both legal and equitable, is taken out of the bankrupt and is vested in his trustee¹; whereas on a winding up the legal estate then in the company still remains in it until its dissolution, unless disposed of in due course of winding up², or unless vested in the liquidator by order of the court³, and the equitable estate is taken out of the company⁴.

1 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 390 et seq.

2 *Re Ebsworth and Tidy's Contract* (1889) 42 ChD 23 at 49, 52, CA; *Bank of Scotland v Macleod* [1914] AC 311 at 321, HL; *Re Katherine et Cie Ltd* [1932] 1 Ch 70 at 74.

3 See para 575 ante.

4 See para 672 text and note 7 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(i) In general/675. Delivery and seizure of assets and documents.

675. Delivery and seizure of assets and documents.

Where a winding-up order has been made or a provisional liquidator has been appointed and any person has in his possession or control any property¹, books, papers or records to which the company appears to be entitled, the court may require that person forthwith, or within such period as the court may direct, to pay, deliver, convey, surrender or transfer the property, books, papers or records to the liquidator or provisional liquidator, as the case may be².

The powers conferred on the court by these provisions are exercisable by the liquidator in a winding up by the court or, where a provisional liquidator has been appointed, by him³. Any person on whom a requirement under this provision is imposed by the liquidator or provisional liquidator must, without avoidable delay, comply with it⁴.

Where the liquidator or provisional liquidator, as the case may be, seizes or disposes of any property which is not property of the company⁵, and at the time of seizure or disposal the liquidator or provisional liquidator, as the case may be, believes, and has reasonable grounds for believing, that he is entitled, whether in pursuance of an order of the court or otherwise, to seize or dispose of that property⁶, the liquidator or provisional liquidator, as the case may be:

- 1103 (1) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except in so far as that loss or damage is caused by the negligence of the liquidator or provisional liquidator, as the case may be⁷; and
- 1104 (2) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal⁸.

1 As to the meaning of 'property' see para 489 note 8 ante.

2 Insolvency Act 1986 s 234(1)(c), (d), (2). Section 234 (as amended) (see also the text to note 4 infra) also applies where a company enters administration (see para 145 et seq ante) or an administrative receiver is appointed (see para 380 et seq ante); and in such cases references to the liquidator or provisional liquidator should be read as references to the administrator or administrative receiver, as the case may be: s 234(1)(a), (b) (s 234(1)(a) substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 23). The Insolvency Act 1986 s 234 (as amended) also applies to a liquidator in a voluntary winding up (see note 5 infra) and may be used to decide disputed questions of ownership (the Insolvency Rules 1986, SI 1986/1925, Pt 7 (rr 7.1-7.64) (as amended) providing a flexible procedure to allow resolution of such disputes): *Re London Iron and Steel Co Ltd* [1990] BCLC 372, [1990] BCC 159. An application under the Insolvency Act 1986 s 234 (as amended) should not be made without notice save on the usual grounds of secrecy or urgency: *Re First Express Ltd* [1992] BCLC 824, [1991] BCC 782. The Insolvency Act 1986 s 234 (as amended) is a procedural provision only and does not affect substantive rights: *Re Leyland DAF Ltd* [1994] 1 BCLC 264, [1993] BCC 626 (administrative receivers' application stayed to give effect to foreign jurisdiction clause). The Insolvency Act 1986 s 234 (as amended) may also give rise to a right to bring a claim in conversion: *Smith (administrator of Cosslett (Contractors) Ltd) v Bridgend County Borough Council* [2001] UKHL 58, [2002] 1 AC 336, [2002] 1 All ER 292.

3 Insolvency Rules 1986, SI 1986/1925, r 4.185(1). As to the power to delegate these matters to the liquidator as an officer of the court and subject to the court's control see the Insolvency Act 1986 s 160; and para 588 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.185(2). No express provision is made for any sanction or penalty; but as to enforcement of court orders see para 1025 et seq post.

5 Insolvency Act 1986 s 234(3)(a).

6 Ibid s 234(3)(b).

7 Ibid s 234(4)(a).

8 Ibid s 234(4)(b). As to the application of these provisions to a provisional liquidator see para 491 ante; as to the application of these provisions to a voluntary liquidator see para 960 post; as to the application of these provisions to an administrator see para 167 ante; and as to the application of these provisions to an administrative receiver see para 400 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(i) In general/676. Unenforceability of liens.

676. Unenforceability of liens.

Where a company is being wound up by the court, a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the liquidator¹. This does not, however, apply to a lien on documents which give a title to property and are held as such².

¹ Insolvency Act 1986 s 246(1)(b), (2). Section 246 deals with rights to property in documents, not the obtaining of information contained in documents: *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360.

² Insolvency Act 1986 s 246(3). The words 'as such' do not mean that the documents are held so as to confer on the holder a proprietary interest in the property to which they relate, but merely mean that the circumstances, manner or capacity in which they are held are such as to give rise to a lien: *Brereton v Nicholls* [1993] BCLC 593.

The Insolvency Act 1986 s 246 (as amended) also applies where a provisional liquidator is appointed (see s 246(1)(c); and para 491 ante), the company enters administration (see s 246(1)(a) (as amended); and para 145 ante) or where the company goes into voluntary liquidation (see para 939 et seq post).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(i) In general/677. Order to pay money into Bank of England.

677. Order to pay money into Bank of England.

In a winding up by the court, the court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England or any of its branches to the account of the liquidator, instead of to the liquidator; and the order may be enforced in the same manner as if it had directed payment to the liquidator¹. All money and securities paid or delivered into the Bank of England or any of its branches in the event of a winding up by the court are subject in all respects to the orders of the court².

1 Insolvency Act 1986 s 151(1); and see *Re Leeds Banking Co* (1866) 1 Ch App 150.

2 Insolvency Act 1986 s 151(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/678. Duty to co-operate with liquidator.

(ii) Disclosure of Property; Information

678. Duty to co-operate with liquidator.

Certain persons are under a duty to give to the liquidator, provisional liquidator or official receiver¹, as the case may be, such information concerning the company and its promotion, formation, business², dealings, affairs or property³ as the liquidator, provisional liquidator or official receiver, as the case may be, may at any time after the effective date⁴ reasonably require, and to attend on him at such times as he may reasonably require⁵.

The persons who are under such duty to co-operate are:

- 1105 (1) those who are or have at any time been officers⁶ of the company⁷;
- 1106 (2) those who have taken part in the formation of the company at any time within one year before the effective date⁸;
- 1107 (3) those who are in the employment of the company, or have been in its employment, including employment under a contract for services, within that year, and are in the opinion of the liquidator, provisional liquidator or official receiver, as the case may be, capable of giving information which he requires⁹;
- 1108 (4) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of another company which is, or within that year was, an officer of the company in question¹⁰; and
- 1109 (5) in the case of a company being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the company¹¹.

If a person without reasonable excuse fails to comply with any such obligations, he is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum¹².

1 le whether or not, in a winding up by the court, the official receiver is the liquidator: Insolvency Act 1986 s 235(1). As to the official receiver see para 503 et seq ante. Section 235 also applies where a company has entered administration (see s 234(1)(a) (as amended), s 235(1); and para 167 ante), where an administrative receiver is appointed (see ss 234(1)(b), 235(1); and para 400 ante), and in a voluntary winding up (see para 962 post); and references to the liquidator should be read in such cases as including the liquidator in a voluntary winding up, administrator or administrative receiver, as the case may be (see s 234(1) (as amended), s 235(1)).

2 As to the meaning of 'business' see para 156 note 1 ante.

3 As to the meaning of 'property' see para 489 note 8 ante.

4 For these purposes, 'the effective date' is whichever is applicable of the following dates: (1) the date on which the company entered administration; (2) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed; (3) the date on which the provisional liquidator was appointed; and (4) the date on which the company went into liquidation: Insolvency Act 1986 s 235(4) (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 24). For the meaning of 'go into liquidation' see para 9 note 3 ante.

5 Insolvency Act 1986 s 235(1), (2). The use in disqualification proceedings of statements obtained under s 235 does not necessarily involve a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134 et seq): see *Official Receiver v Stern* [2001] 1 All ER 633, [2000] 1 WLR 2230, CA. Moreover, since the purpose of the Insolvency Act 1986 s 235 includes the identification of potential criminal or other misconduct and the taking of appropriate steps in relation to it, information given thereunder may be disclosed to another prosecuting authority, without an order of the court or notice to the person who had provided it, if required by that authority for the purpose of investigating crime: see *R v Brady* [2004] EWCA Crim 1763, [2004] 3 All ER 520.

6 For the meaning of 'officer' see para 690 post.

7 Insolvency Act 1986 s 235(3)(a).

8 Ibid s 235(3)(b).

9 Ibid s 235(3)(c).

10 Ibid s 235(3)(d).

11 Ibid s 235(3)(e).

12 Ibid ss 235(5), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to the power of the court to make orders for the enforcement of obligations imposed by s 235 (as amended) see para 1025 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/679. Inquiry into company's dealings.

679. Inquiry into company's dealings.

The court may¹, on the application of the liquidator, provisional liquidator or official receiver², as the case may be, summon to appear before it³:

- 1110 (1) any officer⁴ of the company⁵;
- 1111 (2) any person known or suspected to have in his possession any property⁶ of the company or supposed to be indebted to the company⁷; or
- 1112 (3) any person whom the court thinks capable of giving information concerning the promotion, formation, business⁸, dealings, affairs or property of the company⁹.

The court may require any such person to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the promotion, formation, business, dealings, affairs or property of the company¹⁰.

Any person who appears or is brought before the court under these provisions may be examined on oath, either orally or by interrogatories, concerning the company or the promotion, formation, business, dealings, affairs or property of the company¹¹.

A person against whom an order for examination has been obtained may be restrained by injunction from leaving the jurisdiction pending the examination¹².

Where an order for the production of documents is sought, and the documents belong to a third party, the owner of the documents should normally be given the opportunity to appear¹³.

1 The court's power to order an examination is discretionary and the power must be exercised after the court has carefully balanced the interests involved; on the one hand, the need of the office-holder to carry out his task and, on the other hand, the need to avoid making an order which is wholly unreasonable, unnecessary or oppressive to the person concerned: *British and Commonwealth Holdings plc (joint administrators) v Spicer and Oppenheim (a firm)* [1993] AC 426, [1992] 4 All ER 876, HL. The cases cited in note 3 infra must be read subject to the decision in *British and Commonwealth Holdings plc (joint administrators) v Spicer & Oppenheim (a firm)* supra. The scope of the order is not limited to information needed to reconstitute the knowledge of the company: *British and Commonwealth Holdings plc (joint administrators) v Spicer & Oppenheim (a firm)* supra. Factors which may be taken into account by the court in exercising its discretion include:

- 33 (1) whether the order is sought against those under a duty to co-operate with the office-holder already, such as those under a duty by virtue of the Insolvency Act 1986 s 235 (as amended) (see para 678 ante);
- 34 (2) the views of the office-holder are to be given great weight;
- 35 (3) the office-holder is entitled not only to general information but to specific information concerning possible claims against specific persons;
- 36 (4) the mere fact that an office-holder has commenced or is about to commence proceedings against the respondent is not an absolute bar to the making of an order;
- 37 (5) the risk that a respondent might expose himself to liability is merely a factor to be taken into account; the risk of exposure to a fraud claim is not conclusive;

- 38 (6) the fact that a respondent may have to answer questions which expose him to a criminal liability is not decisive;
- 39 (7) an oral examination is likely to be more oppressive than the other possible orders under s 236.

For examples of the exercise of this discretion see *Re AE Farr Ltd* [1992] BCLC 333, [1992] BCC 150 (investigations by the Serious Fraud Office); *Re PFTZM Ltd (in liquidation), Jourdain v Paul* [1995] 2 BCLC 354, [1995] BCC 280 (questions against third parties designed to prove liability as shadow directors); *Re Arrows Ltd (No 2)* [1994] 1 BCLC 355, CA (preferring of criminal charges); *Re Adviser (188) Ltd & Bishopsgate Investment Management Ltd, ex p Trachtenberg* [1993] BCC 492, CA (risk of self-incrimination); *Re RBG Resources Ltd, Shierson v Rastogi* [2002] EWCA Civ 1624, [2003] 1 WLR 586 (where proceedings had been commenced against the examinees but an order was made).

Orders made pursuant to the Insolvency Act 1986 s 236 (see the text and notes 2-10 infra; and para 685 post) are binding on the Crown: *Soden v Burns, R v Secretary of State for Trade and Industry, ex p Soden* [1996] 3 All ER 967.

The court has power to make orders for disclosure of documents situated abroad where the liquidator reasonably requires to see the documents in order to carry out his statutory functions and production does not impose an unnecessary or unreasonable burden on the respondent: *Re Mid-East Trading Ltd, Lehman Bros Inc v Phillips* [1998] 1 All ER 577, [1998] 1 BCLC 240, CA. Where there is a real risk that production would expose the respondent to claims for breach of confidence or criminal liability, the court will be slow to order production: *Re Mid-East Trading Ltd, Lehman Bros Inc v Phillips* supra.

The court had no power to order production of documents where disclosure was prohibited by the Banking Act 1987 s 82 (now repealed) but could order disclosure of documents redacted so that there would be no such breach: *Re Galileo Group Ltd, Ellis v Hambros Bank Ltd (Bank of England Intervening)* [1999] Ch 100, [1998] 1 All ER 545.

The documents which the court may order to be produced are not confined to those which were in existence at the date of the company's insolvency, and hence the court may order documents brought into existence by the administrative receivers of a company: *Re Trading Partners Ltd, Akers v Lomas* [2002] 1 BCLC 655.

The official receiver is entitled to use his power under the Insolvency Act 1986 s 236 for the sole purpose of obtaining evidence for use in disqualification proceedings against a director: *Re Pantmaenog Timber Co Ltd (in liquidation)* [2003] UKHL 49, [2004] 1 AC 158, [2003] 4 All ER 18.

Save where a liquidator shows a clear necessity for such an order, an order will not be made to enable a liquidator to obtain information relating to a proof of debt, the correct course being for the liquidator to reject the proof: see *Bellmex International Ltd (in liquidation) v British American Tobacco Ltd* [2001] 1 BCLC 91; and para 783 post.

2 le whether or not in a winding up by the court the official receiver is the liquidator: Insolvency Act 1986 s 236(1). As to the official receiver see para 503 et seq ante. As to the official receiver's power to apply for a public examination see para 538 et seq ante. Section 236 (see also para 685 post) and s 237 (see the text and note 11 infra; and para 686 post) apply in a voluntary winding up (see para 962 post), where a company enters administration (see s 234(1)(a) (as amended), s 236(1); and para 167 ante) and where an administrative receiver is appointed (see ss 234(1)(b), 236(1); and para 400 ante); and references to the liquidator should in such cases be read as including the liquidator in a voluntary winding up, administrator or administrative receiver, as the case may be (see s 234(1) (as amended), s 236(1)). Where a company in provisional liquidation has entered into a scheme of arrangement with its creditors, and the provisional liquidators have been appointed scheme administrators, an order obtained by the scheme administrators prior to the termination of the provisional liquidation will be discharged: *Re Kingscroft Insurance Co Ltd* [1994] 2 BCLC 80, [1994] BCC 343; cf *Re Maxwell Communications Corp plc (No 3)* [1995] 1 BCLC 521, sub nom *Re Maxwell Communications Corp plc, Homan v Vogel* [1994] BCC 741. A creditor in a voluntary winding up is not able to apply under Insolvency Act 1986 s 236 for a private examination to be held: *Re James McHale Automobiles Ltd* [1997] 1 BCLC 273, [1997] BCC 202.

Where application is made to the English court to issue a letter of request to a foreign court, that application is not made under the Insolvency Act 1986 s 236 but under the court's inherent jurisdiction: *Re Anglo-American Insurance Co Ltd* [2002] BCC 715, [2003] BPIR 793.

3 Insolvency Act 1986 s 236(2). See *Re Overend, Gurney & Co, ex p Musgrave* (1867) 16 LT 378; *Re Rolls Razor Ltd (No 2)* [1970] Ch 576, [1969] 3 All ER 1386. The object of the analogous provision in the Companies Act 1948 s 268(1) (repealed) was to enable the liquidator to carry out his duties more efficiently, speedily and economically than would otherwise be the case, and applications were accordingly judged on that basis: *Re Rolls Razor Ltd* [1968] 3 All ER 698; and see *Re Castle New Homes Ltd* [1979] 2 All ER 775, [1979] 1 WLR 1075; *Re Spirafite Ltd* (1974) [1979] 2 All ER 766, [1979] 1 WLR 1096n (the provision was not to be used to enable the liquidator merely to improve his position as a litigant in subsisting litigation). The court would not allow an examination under the provision where this would be oppressive, vexatious or unfair (see *Re Embassy Art*

Products Ltd [1988] BCLC 1, 3 BCC 292); but this principle had to be applied in the light of the requirement that a person who had been involved in the affairs of an insolvent company had a public duty to assist the liquidator to investigate the affairs of the company in the interest of its creditors (*Re JT Rhodes Ltd* [1987] BCLC 77). The Insolvency Rules 1986, SI 1986/1925, rr 9.1-9.6 (as amended) (see paras 680-687 post) apply to applications to the court for an order under the Insolvency Act 1986 s 236: Insolvency Rules 1986, SI 1986/1925, r 9.1(1)(a). As to the duties of persons to co-operate with the liquidator see para 678 ante.

4 For the meaning of 'officer' see para 690 post.

5 Insolvency Act 1986 s 236(2)(a).

6 As to the meaning of 'property' see para 489 note 8 ante.

7 Insolvency Act 1986 s 236(2)(b).

8 As to the meaning of 'business' see para 156 note 1 ante.

9 Insolvency Act 1986 s 236(2)(c).

10 Ibid s 236(3). As to the unenforceability of liens see para 676 ante. See also *Re Highgrade Traders Ltd* [1984] BCLC 151, CA (reports held by insurance company claims officer relating to fire damage privileged; an examination under the Companies Act 1948 s 268 (repealed) did not therefore extend to them). As to the use to which documents so obtained may be put by the liquidator see *Re Esal Commodities Ltd* [1989] BCLC 59, 4 BCC 475, CA.

11 Insolvency Act 1986 s 237(4). Under the Companies Act 1948 s 268 (repealed), it was held that there was no invariable requirement that a private examination under that provision should be preceded by written questions; it was a matter for the unfettered discretion of the court which had to determine how the investigation could best be carried out, balancing the views of the liquidator, which were entitled to great weight, with the requirement that the investigation should not be carried out in a way which was oppressive or unfair to persons ordered to be examined: *Re Norton Warburg Holdings Ltd and Norton Warburg Investment Management Ltd* [1983] BCLC 235.

12 *Re Oriental Credit Ltd* [1988] Ch 204, [1988] 1 All ER 892. The Insolvency Act 1986 s 236 has no extra-territorial effect: *Re Seagull Manufacturing Co Ltd (in liquidation)* [1993] Ch 345, [1993] 2 All ER 980, CA; cf *Re Mclsaac, Petitioner (Joint Liquidators of First Tokyo Index Trust Ltd)* [1994] BCC 410, Ct of Sess.

13 *Morris v Director of the Serious Fraud Office* [1993] Ch 372, [1993] 1 All ER 788. The exceptions to this rule include: (1) where giving notice of the application to the third party might seriously prejudice the object of the application; (2) the need for information or documents as a matter of dire emergency; (3) where the third party cannot be traced: *Re Murjani (a bankrupt)* [1996] 1 All ER 65 at 78, [1996] 1 BCLC 272 at 286 per Lightman J (decided under the Insolvency Act 1986 s 366 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 307, 313)); cf *Soden v Burns, R v Secretary of State for Trade and Industry, ex p Soden* [1996] 3 All ER 967 (transcripts of witnesses examined by inspectors appointed pursuant to the Companies Act 1985 s 432 (as amended) (see COMPANIES vol 15 (2009) PARA 1542) sought by administrators; it was held that the witnesses should be notified and given an opportunity to object to disclosure).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

679 Inquiry into company's dealings

NOTE 1--For a further example of the exercise of the discretion under the 1986 Act s 236 see *Green v BDO Stoy Hayward LLP* [2005] EWHC 2413 (Ch), (2005) Times, 8 November (case against officer or former officer of a company stronger than that against third party; auditors 'officers' for this purpose).

NOTE 3--SI 1986/1925 r 9.1(1)(aa) added: SI 2009/642.

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680. Obtaining order for examination.

The application¹ must be in writing, and must be accompanied by a brief statement of the grounds on which it is made². The respondent³ must be sufficiently identified in the application⁴. There must be stated in the application whether it is an application for the respondent:

- 1113 (1) to be ordered to appear before the court⁵;
- 1114 (2) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter⁶;
- 1115 (3) to submit affidavits (if so, particulars to be given of the matters to which he is required to swear)⁷; or
- 1116 (4) to produce books, papers or other records (if so, the items in question to be specified)⁸,

or for any two or more of those purposes⁹.

The application may be made without notice¹⁰.

1 le for an order under the Insolvency Act 1986 s 236: see para 679 ante. As to the prescribed form of order see the Insolvency Rules 1986, SI 1986/1925, rr 9.1, 12.7, Sch 4 Form 9.1. In principle, deponents to affidavits in respect of the application may be subjected to cross-examination unless contrary affidavits are sworn raising issues of fact which can only be resolved by cross-examination: *Re Cloverbay Ltd (No 2)* [1990] BCLC 449, [1990] BCC 229.

2 Insolvency Rules 1986, SI 1986/1925, r 9.2(1). The statement made by the liquidator is prima facie confidential by reason of r 9.5(3) and is not open to inspection by the respondent without leave of the court: see para 683 post. If inspection is sought by a respondent seeking to set aside an order under the Insolvency Act 1986 s 236, the court will allow inspection where it thinks that it may not be able properly to dispose of the application without allowing inspection; the office-holder would then need to satisfy the court of the need to maintain confidentiality: *Re British and Commonwealth Holdings plc (Nos 1 and 2)* [1992] Ch 342, [1992] 2 All ER 801, CA (affd sub nom *British and Commonwealth Holdings plc (joint administrators) v Spicer and Oppenheim (a firm)*) [1993] AC 426, [1992] 4 All ER 876, HL); *Re Murjani (a bankrupt)* [1996] 1 All ER 65, [1996] 1 BCLC 272 (decided under the Insolvency Act 1986 s 366 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 307, 313)); *Re Anglo-American Insurance Co Ltd* [2002] BCC 715, [2003] BPIR 793 (on the inherent jurisdiction of the court on issuing a letter of request for an examination order to be made by a foreign court). The proper course for an office-holder making an application is for him to put sensitive information in an annexure: *Re British and Commonwealth Holdings plc (Nos 1 and 2)* supra; *Re Murjani (a bankrupt)* supra. Whilst it might be appropriate for the office-holder to refer to without prejudice negotiations, it is generally inappropriate to refer to the content of the negotiations or to exhibit them: *Re Anglo-American Insurance Co Ltd* supra.

3 For these purposes, 'the respondent' means the person in respect of whom an order is applied for: Insolvency Rules 1986, SI 1986/1925, r 9.1(2)(a).

4 Ibid r 9.2(2).

5 Ibid r 9.2(3)(a).

6 Ibid r 9.2(3)(b). If it is stated that the application is for the respondent to be so ordered, CPR Pt 18 (further information: see CIVIL PROCEDURE vol 11 (2009) PARAS 611-612) applies to any such order: Insolvency Rules 1986, SI 1986/1925, r 9.2(3)(b) (substituted by SI 1999/1022).

7 Insolvency Rules 1986, SI 1986/1925, r 9.2(3)(c).

8 Ibid r 9.2(3)(d).

9 Ibid r 9.2(3). Where documents are disclosed by mistake, then, unless the office-holder knew of the mistake, or they were obtained by fraud, the documents remain disclosed: *Re Polly Peck International plc* [1992] BCLC 1025.

10 Insolvency Rules 1986, SI 1986/1925, r 9.2(4). As to the making of applications see para 1055 et seq post. If the application is made without notice, there is a duty to place all material facts before the court: *Re John T Rhodes Ltd (No 2)* (1987) 3 BCC 588. An application under the Insolvency Act 1986 s 236 must not be seen as an all-embracing exception to the general rule that a person is entitled to be heard before an order of the court is made against him, and some good reason must be shown as justifying a without notice application: *Re Maxwell Communications Corp plc (No 3)* [1995] 1 BCLC 521, sub nom *Re Maxwell Communications Corp plc*, *Homan v Vogel* [1994] BCC 741; *Re PFTZM Ltd (in liquidation)*, *Jourdain v Paul* [1995] 2 BCLC 354, [1995] BCC 280; *Re Murjani (a bankrupt)* [1996] 1 All ER 65, [1996] 1 BCLC 272 (decided under the Insolvency Act 1986 s 366); cf *Re First Express Ltd* [1992] BCLC 824, [1991] BCC 782.

The Insolvency Rules 1986, SI 1986/1925, Pt 9 (rr 9.1-9.6) (as amended) does no more than reflect how the court would have previously exercised its inherent jurisdiction under the predecessor provisions of the Insolvency Act 1986 s 236 (ie the Insolvency Act 1985 ss 95(1), (1), 100(1), (2), (6) (repealed)): *Re Anglo-American Insurance Co Ltd* [2002] BCC 715, [2003] BPIR 793.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

680 Obtaining order for examination

TEXT AND NOTES 1, 4--SI 1986/1925 r 9.1 amended: SI 2009/642, SI 2010/686. SI 1986/1925 r 9.2(2) substituted: SI 2010/686. SI 1986/1925 Sch 4 Form 9.1 amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/681. Order for examination.

681. Order for examination.

The court may, whatever the purpose of the application, make any order which it has power¹ to make². The court, if it orders the respondent³ to appear before it, must specify a venue⁴ for his appearance, which must be not less than 14 days from the date of the order⁵. The court may, if it thinks fit, order that any person who, if within the jurisdiction of the court, would be liable to be summoned to appear before it⁶ be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom⁷.

If the respondent is ordered to submit affidavits, the order must specify the matters which are to be dealt with in his affidavits, and the time within which they are to be submitted to the court⁸. If the order is to produce books, papers or other records, the time and manner of compliance must be specified⁹.

The order must be served forthwith on the respondent; and it must be served personally, unless the court otherwise orders¹⁰.

1 Ie under the Insolvency Act 1986 s 236: see para 679 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 9.3(1). As to the prescribed form of order see rr 9.1, 12.7, Sch 4 Form 9.1.

3 For the meaning of 'the respondent' see para 680 note 3 ante.

4 For the meaning of 'venue' see para 91 note 7 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 9.3(2).

6 Ie under the Insolvency Act 1986 s 236 or s 237.

7 Ibid s 237(3). An injunction may be obtained to restrain a person from leaving the jurisdiction pending the examination: *Re Oriental Credit Ltd* [1988] Ch 204, [1988] 1 All ER 892. The court will not give leave to serve an order for private examination on a person outside the jurisdiction: see *Re Seagull Manufacturing Co Ltd (in liquidation)* [1993] Ch 345, [1993] 2 All ER 980, CA; and para 1091 post. For the meaning of 'United Kingdom' see para 12 note 2 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 9.3(3).

9 Ibid r 9.3(4).

10 Ibid r 9.3(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

681 Order for examination

NOTE 2--SI 1986/1925 Sch 4 Form 9.1 amended: SI 2009/2472.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/682. Procedure at examination.

682. Procedure at examination.

At any examination of the respondent¹, the applicant may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow². Any other person who could have applied for an order³ in respect of the company's affairs may, with the leave of the court and if the applicant does not object, attend the examination and put questions to the respondent but only through the applicant⁴. If the respondent is ordered to clarify any matter or to give additional information, the court must direct him as to the questions which he is required to answer, and as to whether his answers, if any, are to be made on affidavit⁵.

Where the application has been made on information provided by a creditor of the company, that creditor may, with the leave of the court and if the applicant does not object, attend the examination and put questions to the respondent, but only through the applicant⁶. The respondent may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purposes of enabling him to explain or qualify any answers given by him, and may make representations on his behalf⁷.

¹ For the meaning of 'the respondent' see para 680 note 3 ante.

² Insolvency Rules 1986, SI 1986/1925, r 9.4(1). As to whether a claim for legal professional privilege is overridden by an order under the Insolvency Act 1986 s 236 see *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360; *Re Brook Martin & Co (Nominees) Ltd* [1993] BCLC 328; *Re Murjani (a bankrupt)* [1996] 1 All ER 65, [1996] 1 BCLC 272 (decided under the Insolvency Act 1986 s 366 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 307, 313)). In *Re Aveling Barford Ltd* supra, it was assumed that legal professional privilege was not overridden, although details had to be given (in the case of documents) of the document in respect of which privilege was claimed, the client claiming the privilege and the grounds on which the claim was made. In *Re Brook Martin & Co (Nominees) Ltd* supra, where the directors were solicitors, legal professional privilege could not be claimed where the claim inhered in the company and the office-holder was able to waive any such claim. This applied even when the privilege was not only that of the company but also of a third party. It was further indicated that legal professional privilege might be overridden in exceptional circumstances. In *Re Murjani (a bankrupt)* supra, it was held that any information or documentation, which, if possessed by the clients, would be disclosable by the clients under an order for private examination, was likewise disclosable by the solicitors, if possessed by the solicitors. It is not usual to spell out the entitlement to claim the privilege in the order itself: *Re Cloverbay Ltd* [1989] BCLC 724, 5 BCC 732.

The privilege against self-incrimination is not available to any person who is under a duty under the Insolvency Act 1986 s 235 (as amended) (see para 678 ante) to co-operate with the office-holder: *Bishopsgate Investment Management Ltd (in provisional liquidation) v Maxwell* [1993] Ch 1, [1992] 2 All ER 856, CA; *Re Jeffrey S Levitt Ltd (in administrative receivership)* [1992] Ch 457, [1992] 2 All ER 509; *Re AE Farr Ltd* [1992] BCLC 333, [1992] BCC 150. It seems that the privilege may be claimed by persons not subject to such duty: *Bishopsgate Investment Management Ltd v Maxwell* supra; *Re Jeffrey S Levitt Ltd* supra; *Re AE Farr Ltd* supra; *O'Toole v Mitcham* (1977) 2 ACLR 471, Vict SC.

³ Under the Insolvency Act 1986 s 236: see para 679 ante.

⁴ Insolvency Rules 1986, SI 1986/1925, r 9.4(2). Where a company in provisional liquidation has entered into a scheme of arrangement with its creditors, and the provisional liquidators have been appointed scheme administrators, an order obtained by the scheme administrators prior to the termination of the provisional liquidation will be discharged: *Re Kingscroft Insurance Co Ltd* [1994] 2 BCLC 80, [1994] BCC 343; cf *Re Maxwell Communications Corp plc (No 3)* [1995] 1 BCLC 521, sub nom *Re Maxwell Communications Corp plc, Homan v Vogel* [1994] BCC 741 (a foreign practitioner in charge of parallel foreign insolvency proceedings will not be allowed to attend to ask questions).

5 Insolvency Rules 1986, SI 1986/1925, r 9.4(3) (substituted by SI 1999/1022).

6 Insolvency Rules 1986, SI 1986/1925, r 9.4(4).

7 Ibid r 9.4(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

682 Procedure at examination

TEXT AND NOTES 4, 6--SI 1986/1925 r 9.4(2) substituted, r 9.4(4) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/683. Record of examination.

683. Record of examination.

There must be made in writing such record of the examination as the court thinks proper; and the record must be read over either to or by the respondent¹ and signed by him at a venue² fixed by the court³. The written record may in any proceedings⁴ be used as evidence against the respondent of any statement made by him in the course of his examination⁵.

Unless the court otherwise directs, the written record of the respondent's examination, and any answer given by him to requests for information, and any affidavits submitted by him in compliance with an order of the court⁶ must not be filed in court⁷. The written record, answers and affidavits must not be open to inspection, without an order of the court, by any person other than the applicant for an order, or any person who could have applied for such an order in respect of the affairs of the same company⁸. This applies also to so much of the court file as shows the grounds of the application for an order and to any copy of proposed requests for information⁹. The court may from time to time give directions as to the custody and inspection of any such documents and as to the furnishing of copies of, or extracts from, such documents¹⁰.

Transcripts of proceedings¹¹ may be the subject of legal professional privilege¹².

Information obtained by the liquidator is prima facie to be used for the beneficial winding up of the company and for no other purpose¹³. This principle is, however, displaced where the liquidator is authorised or required to produce the information in question to the person seeking it¹⁴.

1 For the meaning of 'the respondent' see para 680 note 3 ante.

2 For the meaning of 'venue' see para 91 note 7 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 9.4(6). As to the appointment of shorthand writers see para 684 post.

4 Ie whether under the Insolvency Act 1986 or otherwise.

5 Insolvency Rules 1986, SI 1986/1925, r 9.4(7).

6 Ie under the Insolvency Act 1986 s 236: see para 679 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 9.5(1). For the meaning of 'file in court' see para 129 note 3 ante.

8 Ibid r 9.5(2). As to the persons who may apply for such an order see para 679 ante.

9 Ibid r 9.5(3).

10 Ibid r 9.5(4).

11 Ie proceedings under the Insolvency Act 1986 s 236: see para 679 ante.

12 *Dubai Bank Ltd v Galadari* [1990] Ch 98, [1989] 3 All ER 769, CA.

13 *Re Esal (Commodities) Ltd* [1989] BCLC 59, 4 BCC 475 (disclosure to office-holders of subsidiaries); *Re Barlow Clowes Gilt Managers Ltd* [1992] Ch 208, [1991] 4 All ER 385 (documents sought by defendants in pending criminal proceedings); *Re Polly Peck International plc, ex p the joint administrators* [1994] BCC 15

(disclosure by office-holders to the Secretary of State for proceedings under the Company Directors Disqualification Act 1986); *Re a Company (No 005374 of 1993)* [1993] BCC 734 (disclosure to creditors whose claims, if successful, would reduce the proofs in the insolvency).

14 *Re Arrows Ltd (No 4), Hamilton v Naviede* [1995] 2 AC 75, [1994] 3 All ER 814, HL; *Re Adviser (188) Ltd & Bishopsgate Investment Management Ltd, ex p Trachtenberg* [1993] BCC 492, CA; *R v Director of the Serious Fraud Office, ex p Smith* [1993] AC 1, sub nom *Smith v Director of the Serious Fraud Office* [1992] 3 All ER 456, HL; *Re Polly Peck International plc* [1994] BCC 15.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

683 Record of examination

TEXT AND NOTES 6-9--SI 1986/1925 r 9.5(1)-(3) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/684. Nomination and appointment of shorthand writers.

684. Nomination and appointment of shorthand writers.

The judge, in the High Court, and the registrar, in a county court, may in writing nominate one or more persons to be official shorthand writers to the court¹. The court may, at any time in the course of insolvency proceedings², appoint a shorthand writer to take down the evidence of a person examined³. Where the official receiver applies to the court for an order appointing a shorthand writer, he must name the person he proposes for appointment; and that appointment must be made, unless the court otherwise orders⁴.

The remuneration of a shorthand writer appointed in insolvency proceedings must be paid by the party at whose instance the appointment was made, or out of the company's assets, or otherwise, as the court may direct⁵. Any question arising as to the rates of remuneration so payable must be determined by the court in its discretion⁶.

Where in insolvency proceedings the court appoints a shorthand writer on the application of the official receiver, in order that a written record may be taken of the evidence of a person to be examined, the cost of the written record is deemed an expense of the official receiver in the proceedings⁷.

1 Insolvency Rules 1986, SI 1986/1925, r 7.16(1). As to the prescribed form of declaration to be given by the official shorthand writer see rr 7.16, 12.7, Sch 4 Form 7.3.

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.16(2). Such examination takes place under the Insolvency Act 1986 s 236 or s 133 (public examination) (see paras 538 et seq, 679 ante). As to the prescribed form of appointment see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 7.4. As to the prescribed form of declaration by the shorthand writer see Sch 4 Form 7.5.

4 Ibid r 7.16(3). As to the official receiver see para 503 et seq ante.

5 Ibid r 7.17(1).

6 Ibid r 7.17(2) (substituted by SI 1993/602).

7 Insolvency Rules 1986, SI 1986/1925, r 7.18.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

684 Nomination and appointment of shorthand writers

NOTES 1, 2--SI 1986/1925 Sch 4 Forms 7.3-7.5 revoked: SI 2010/686.

NOTE 3--SI 1986/1925 r 7.16(2) amended: SI 2009/642.

TEXT AND NOTE 7--SI 1986/1925 r 7.18 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/685. Failure to appear.

685. Failure to appear.

Where a person without reasonable excuse fails to appear before the court when he is summoned to do so¹ or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court, the court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court² for the arrest of that person, and for the seizure of any books, papers, records, money or goods in that person's possession³. The court may also authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held⁴ until that person is brought before the court under the warrant or until such other time as the court may order⁵.

When a person is arrested under such a warrant, the officer arresting him must forthwith bring him before the court issuing the warrant in order that he may be examined⁶. If he cannot immediately be brought up for examination, the officer must deliver him into the custody of the governor of the prison named in the warrant, who must keep him in custody and produce him before the court as it may from time to time direct⁷. After arresting the person named in the warrant, the officer must forthwith report to the court the arrest or delivery into custody, as the case may be, and apply to the court to fix a venue⁸ for the person's examination⁹. The court must appoint the earliest practicable time for the examination, and must direct the governor of the prison to produce the person for examination at the time and place appointed, and forthwith give notice of the venue to the person who applied for the warrant¹⁰.

Any property in the arrested person's possession which may be seized must, as may be directed by the court, be lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or kept by the officer seizing it pending the receipt of written orders from the court as to its disposal¹¹.

1 Ie under the Insolvency Act 1986 s 236: see para 679 ante.

2 The prescribed officers of the court are, in the case of the High Court, the tipstaff and his assistants of the court, and in the case of a county court, the registrar and the bailiffs: Insolvency Rules 1986, SI 1986/1925, r 7.21(2).

3 Insolvency Act 1986 s 236(4), (5).

4 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see the text to note 11 infra.

5 Insolvency Act 1986 s 236(6).

6 Insolvency Rules 1986, SI 1986/1925, r 7.23(1). As to the prescribed form of warrant see rr 7.23, 12.7, Sch 4 Form 7.8.

7 Ibid r 7.23(2). As to the prescribed form of order for production of the person arrested under such a warrant see Sch 4 Form 7.9 (substituted by SI 1987/1919).

8 For the meaning of 'venue' see para 91 note 7 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 7.23(3).

10 Ibid r 7.23(4). As to the prescribed form of order for the production of a person arrested see Sch 4 Form 7.9 (substituted by SI 1987/1919).

11 Insolvency Rules 1986, SI 1986/1925, r 7.23(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

685 Failure to appear

NOTES 6, 7, 10--SI 1986/1925 Sch 4 Forms 7.8, 7.9 revoked: SI 2010/686.

NOTE 6--SI 1986/1925 r 7.23(1) amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/686. Orders for delivery of property or payment.

686. Orders for delivery of property or payment.

If it appears to the court, on consideration of any evidence obtained under examination¹ that any person has in his possession any property² of the company, the court may, on the application of the liquidator, provisional liquidator or official receiver, as the case may be³, order that person to deliver the whole or any part of the property to him at such time, in such manner and on such terms as the court thinks fit⁴.

If it appears to the court, on consideration of any evidence so obtained, that any person is indebted to the company, the court may, on the application of the liquidator, provisional liquidator or official receiver, as the case may be, order that person to pay to him, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit⁵.

1 le under the Insolvency Act 1986 s 236 or s 237: see the text and notes infra and paras 679, 681 ante.

2 As to the meaning of 'property' see para 489 note 8 ante.

3 See para 679 note 2 ante. As to the liquidator see para 555 et seq ante. As to provisional liquidators see para 491 et seq ante. As to the official receiver see para 503 et seq ante.

4 Insolvency Act 1986 s 237(1).

5 Ibid s 237(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(ii) Disclosure of Property; Information/687. Costs of examination.

687. Costs of examination.

Where the court has ordered an examination of any person¹ and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent², it may order that the costs of the examination be paid by him³.

Where the court makes an order against a person to deliver up property in his possession which belongs to the company⁴, or to pay any amount in discharge of a debt due to the company⁵, the costs of the application for the order may be ordered by the court to be paid by the respondent⁶. Otherwise the applicant's costs must be paid out of the company's assets, unless the court otherwise orders⁷. A person summoned to attend for examination must be tendered a reasonable sum in respect of travelling expenses incurred in connection with his attendance; but other costs falling on him are at the court's discretion⁸. Where the examination is on the application of the official receiver otherwise than in the capacity of liquidator, no order may be made for the payment of costs by him⁹.

1 Ie under the Insolvency Act 1986 s 236: see para 679 et seq ante.

2 For the meaning of 'the respondent' see para 680 note 3 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 9.6(1). The costs of a contested application for an order for examination or the production of documents will normally follow the event: *Re Bank of Credit and Commerce International SA (in liquidation) (No 12)*, *Morris v Bank of America National Trust and Savings Association* [1997] 1 BCLC 526, [1997] BCC 561; *Sasea Finance Ltd (joint liquidators) v KPMG* [1998] BCC 216; *Miller v Bain* [2002] BCC 899, [2003] BPIR 959. See also CPR Pt 44.3; and CIVIL PROCEDURE vol 12 (2009) PARA 1738 et seq.

4 Ie under the Insolvency Act 1986 s 237(1): see para 686 ante.

5 Ie under ibid s 237(2): see para 686 ante.

6 Insolvency Rules 1986, SI 1986/1925, rr 9.1(2)(c), 9.6(2).

7 Ibid rr 9.6(3), 13.8.

8 Ibid r 9.6(4). The discretion to award costs to the respondent extends not only to the costs of an oral examination but also it seems to the costs of complying with other orders which may be made under the Insolvency Act 1986 s 236: *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360; *Re Bank of Credit and Commerce International SA (in liquidation) (No 12)*, *Morris v Bank of America National Trust and Savings Association* [1997] 1 BCLC 526, [1997] BCC 561 (where the decision in *Re Aveling Barford Ltd* supra was tentatively preferred to dicta to the opposite effect in *Re Cloverbay Ltd* [1989] BCLC 724, 5 BCC 732). In the normal case, the costs of complying with an order for the production of documents will fall on the respondent: *Morris v Director of the Serious Fraud Office* [1993] Ch 372, [1993] 1 All ER 788; *Re Cloverbay Ltd* supra.

9 Insolvency Rules 1986, SI 1986/1925, r 9.6(5). As to the official receiver see para 503 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

687 Costs of examination

TEXT AND NOTE 7--SI 1986/1925 r 9.6(3) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/ (iii) Misfeasance Proceedings/688. Liability for misfeasance.

(iii) Misfeasance Proceedings

688. Liability for misfeasance.

If in the course of the winding up of a company¹ it appears that a person who is or has been an officer² of the company or who has acted as liquidator or administrative receiver³ of the company or who otherwise is or has been concerned, or has taken part, in the promotion⁴, formation or management of the company, has misapplied or retained or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty⁵ in relation to the company, the court may, on the application⁶ of the official receiver or the liquidator, or of any creditor or contributory⁷, examine the conduct of that person and compel him to repay, restore or account for the money or property, or any part of it, with interest at such rate as the court thinks just⁸ or to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just⁹.

1 The Insolvency Act 1986 s 212 (as amended) applies whether the winding up is by the court or voluntary; and it may be invoked in the winding up of an unregistered company (*Davies' Case* (1890) 45 ChD 537) or of an industrial and provident society (*Re Ferndale Industrial Co-operative Society* [1894] 1 QB 828).

2 For the meaning of 'officer' see para 690 post.

3 As to the liability of liquidators and administrative receivers for misfeasance see further para 696 post. See also note 9 infra.

4 See para 693 post. As to promoters see COMPANIES vol 14 (2009) PARA 49. The court may make an order under the Insolvency Act 1986 s 212 (as amended) against any person who may have helped to promote or form the company even though he was not an officer of the company when it was formed: *Re Sale Hotel and Botanical Gardens Ltd, ex p Hesketh* (1898) 78 LT 368, CA. A management trainee who had not risen much above the status of an office boy was held not to have been concerned in or taken part in the promotion, formation or management of a company: *Re Clasper Group Services Ltd* [1989] BCLC 143, 4 BCC 673.

5 For the meaning of 'misfeasance or breach of any fiduciary or other duty' see para 692 post.

6 As to the making of applications see para 1055 et seq post.

7 As to the official receiver see para 503 et seq ante. For the meaning of 'contributory' see para 703 post. As to the restrictions on the power to make an application without the leave of the court see para 689 post.

8 For the analogous provision under the Supreme Court Act 1981 s 35A (as added) see DAMAGES vol 12(1) (Reissue) para 848. Income tax may be deducted: *Riches v Westminster Bank Ltd* [1947] AC 390, [1947] 1 All ER 469, HL.

9 Insolvency Act 1986 s 212(1), (3) (s 212(1) amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 18(a), Sch 26). The amendment made to these provisions does not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003, in which event a person who has acted as an administrator of a company may also be liable for misfeasance under the Insolvency Act 1986 s 212(1), (3): see s 212(1)(b) (as originally enacted); the Enterprise Act 2002 s 249(1), (2); and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

As to the court's power to grant relief to directors and other officers in certain cases see *Re Welfab Engineers Ltd* [1990] BCLC 833, [1990] BCC 600; and COMPANIES vol 14 (2009) PARA 600. The defence need not be pleaded but may be advanced for the first time at trial: *Re Kirby's Coaches Ltd* [1991] BCLC 414, [1991] BCC 130. As to

the effect of articles providing relief to directors and other officers see COMPANIES vol 14 (2009) PARA 594 et seq. The court has power to apportion the sum to be paid as compensation between the respondents in such a way and with such priority of liability as it thinks fit: *Re Morecambe Bowling Ltd* [1969] 1 All ER 753, [1969] 1 WLR 133. Where the act of misfeasance in fact results in the payment of creditors of the company, it may be appropriate to reduce the amount of the compensation payable by the amount which would have been paid out to such creditors in the liquidation: *West Mercia Safetyware Ltd (in liquidation) v Dodd* [1988] BCLC 250, 4 BCC 30, CA; and see *Re Loquitur Ltd, IRC v Richmond* [2003] EWHC 999 (Ch), [2003] 2 BCLC 442.

In the absence of a special relationship there is no enforceable duty of care owed by administrators towards individual unsecured creditors: see *Kyrris v Oldham* [2003] EWCA Civ 1506, [2004] 1 BCLC 305, [2004] BPIR 165.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

688 Liability for misfeasance

NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 9--As to the appropriateness of awarding summary judgment in such cases see *Phillips v McGregor-Paterson* [2009] EWHC 2385 (Ch), [2010] 1 BCLC 72.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/ (iii) Misfeasance Proceedings/689. Applications requiring leave of the court.

689. Applications requiring leave of the court.

The power to make an application¹ in relation to a person who has acted as liquidator of the company is not exercisable, except with the leave of the court, after he has had his release². The power of a contributory to make an application is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application³.

¹ See under the Insolvency Act 1986 s 212(3): see para 688 ante.

² Ibid s 212(4) (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 18(c), Sch 17). The amendment made to these provisions does not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003, in which event the power to make an application in relation to a person who has acted as administrator of the company is also not exercisable, except with the leave of the court, after he has had his release: see the Insolvency Act 1986 s 212(4) (as originally enacted); the Enterprise Act 2002 s 249(1), (2); and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

As to the release of a liquidator in the case of winding up by the court see para 623 et seq ante; and as to the release of a liquidator in the case of voluntary winding up see para 992 post.

³ Insolvency Act 1986 s 212(5). For the meaning of 'contributory' see para 703 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/ (iii) Misfeasance Proceedings/690. Who are officers.

690. Who are officers.

'Officer', in relation to a company, includes a director, manager or secretary¹. De facto directors or managers are liable if loss has resulted to the company through their acts of misfeasance². The survivors of several directors are liable to misfeasance proceedings³.

¹ Companies Act 1985 s 744; definition applied by the Insolvency Act 1986 s 251. As to the persons who have or have not been held to be officers of the company under the corresponding provisions of the previous Companies Acts, which contained no definition of 'officer', see COMPANIES vol 14 (2009) PARA 607. 'Officer' in the Insolvency Act 1986 s 212 (as amended) does not include a receiver and manager appointed by debenture holders (*Re B Johnson & Co (Builders) Ltd* [1955] Ch 634, [1955] 2 All ER 775, CA); but as to the application of the Insolvency Act 1986 s 212 (as amended) to administrative receivers see para 696 post.

² *Coventry and Dixon's Case* (1880) 14 ChD 660 at 670, CA; *Gibson v Barton* (1875) LR 10 QB 329.

³ *Re British Guardian Life Assurance Co* (1880) 14 ChD 335; *Feltom's Executors Case* (1865) LR 1 Eq 219. As to the liability of the estate of a deceased officer cf *A-G v Canter* [1939] 1 KB 318, [1939] 1 All ER 13, CA; and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) para 816.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/ (iii) Misfeasance Proceedings/691. Nature of misfeasance proceedings.

691. Nature of misfeasance proceedings.

The statutory provisions concerned with liability for misfeasance¹ do not create any new liability or new right; they provide only a summary mode of enforcing rights, including rights created by the winding up², which must otherwise have been enforced by the court's ordinary jurisdiction³. Their operation is not limited to plain cases in which no difficult question of fact or law is involved⁴, but they are not applicable to all cases in which the company has a right of action against an officer, as where the claim is for a simple contract debt or is an ordinary claim for unliquidated damages⁵.

The court's jurisdiction under the statutory provisions is discretionary, and it will exercise its discretion in refusing the relief claimed or limiting its extent in a proper case, notwithstanding that it would have had no such power had the relief been claimed by way of action⁶.

The remedy by misfeasance proceedings ceases to exist on the dissolution of a company⁷.

1 Ie the Insolvency Act 1986 s 212(1), (3) (as amended): see para 688 ante.

2 Eg the rights of a liquidator to recover what the company could not, whilst a going concern, have recovered: *Waterhouse v Jamieson* (1870) LR 2 Sc & Div 29 at 32, HL; *Webb v Whiffin* (1872) LR 5 HL 711; *Re National Funds Assurance Co* (1878) 10 ChD 118 at 123; *Flitcroft's Case* (1882) 21 ChD 519; *Re Simmons Box (Diamonds) Ltd, Cohen v Selby* [2001] 1 BCLC 176, [2002] BCC 82. Where there is any doubt as to the liquidator's rights, his application may be amended by adding a creditor's name: *Re National Funds Assurance Co* supra at 125; *Re British Guardian Life Assurance Co* (1880) 14 ChD 335 at 346.

The Insolvency Act 1986 s 212 (as amended) does not exclude common law remedies in contract or tort: *A & J Fabrications Ltd v Grant Thornton (a firm)* [1998] 2 BCLC 227.

3 *Cavendish Bentinck v Fenn* (1887) 12 App Cas 652 at 669, HL, per Lord Macnaghten; *Coventry and Dixon's Case* (1880) 14 ChD 660, CA; *Re Irish Provident Assurance Co* [1913] 1 IR 352, CA; *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407 at 507, 526, CA; *Re Windsor Steam Coal Co (1901) Ltd* [1929] 1 Ch 151 at 160, CA; *Re Continental Assurance Co of London plc* [2001] BPIR 733 at 848 per Park J.

4 *Re Mercantile Trading Co, Stringer's Case* (1869) 4 Ch App 475 (disapproving *Re Royal Hotel Co of Great Yarmouth* (1867) LR 4 Eq 244).

5 *Re Etic Ltd* [1928] Ch 861.

6 *Re Sunlight Incandescent Gas Lamp Co Ltd* (1900) 16 TLR 535; *Re Home and Colonial Insurance Co Ltd* [1930] 1 Ch 102; *Re Continental Assurance Co of London plc* [2001] BPIR 733 at 848 per Park J; *Re MDA Investment Management Ltd, Whalley v Doney* [2003] EWHC 2277 (Ch) at [71], [2004] 1 BCLC 217 at [71] per Park J.

7 *Pulsford v Devenish* [1903] 2 Ch 625 at 633; and see para 932 note 4 post. As to the power to declare a dissolution void see para 937 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/ (iii) Misfeasance Proceedings/692. Misfeasance or breach of fiduciary or other duty.

692. Misfeasance or breach of fiduciary or other duty.

'Misfeasance or breach of any fiduciary or other duty'¹ includes a breach by a promoter, director, manager, auditor, liquidator, administrative receiver or officer of his duty to the company, the direct consequence of which has been a misapplication or loss of its assets, for which he could be made responsible². Even where there is no pecuniary loss, the court may order the respondents to a misfeasance application to pay the costs³ or may dismiss the summons without costs⁴. Allegations or proof of fraud are not essential⁵.

A transaction cannot be impeached as a misfeasance or breach of trust unless it is a misfeasance or breach of trust in relation to the company; for example, it cannot be impeached where the object of the transaction is not to obtain an undue advantage against the company but to obtain an undue advantage in the stock market as against persons likely to purchase its shares⁶.

The reference⁷ to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator of the company, a reference to any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator of the company⁸.

¹ *Ie* as used in the Insolvency Act 1986 s 212(1) (as amended): see para 688 ante. As to breach of duty by a director see generally COMPANIES vol 14 (2009) PARA 586.

Under the Companies Act 1985 s 631 (repealed), derived from the Companies Act 1948 s 333 (repealed), the words used were 'misfeasance or breach of trust' and these did not include non-feasance, unless it amounted to a breach of trust, and loss of assets had resulted from it: *Re Etic Ltd* [1928] Ch 861; *Marquis of Bute's Case* [1892] 2 Ch 100; *Re Liverpool Household Stores Association* (1890) 59 LJ Ch 616; *Re Forest of Dean Coal Mining Co* (1878) 10 ChD 450; *Re Wedgewood Coal and Iron Co* (1882) 31 WR 181. The words used in the Insolvency Act 1986 s 212(1) (as amended) are wider and include any breach of duty, including a breach of the duty of care owed to the company at common law: *Re Westlowe Storage and Distribution Ltd (in liquidation)* [2000] 2 BCLC 590, [2000] BCC 851; *Re Simmons Box (Diamonds) Ltd, Cohen v Selby* [2001] 1 BCLC 176, [2002] BCC 82. Where an applicant proceeds under the Insolvency Act 1986 s 212(1) (as amended) but all that is alleged is common law negligence, the applicant must establish that cause of action, including causation, at common law: *Re Simmons Box (Diamonds) Ltd, Cohen v Selby* supra.

² *Cavendish Bentinck v Fenn* (1887) 12 App Cas 652, HL; *Re Kingston Cotton Mill Co (No 2)* [1896] 2 Ch 279 at 283, CA; *Re Anglo-French Co-operative Society, ex p Pelly* (1882) 21 ChD 492, CA; *Flitcroft's Case* (1882) 21 ChD 519, CA; *Re London and General Bank (No 2)* [1895] 2 Ch 673 at 691, CA; *Re B Johnson & Co (Builders) Ltd* [1955] Ch 634, [1955] 2 All ER 775, CA.

³ *Re David Ireland & Co* [1905] 1 IR 133, CA.

⁴ *Re Republic of Bolivia Exploration Syndicate Ltd* [1914] 1 Ch 139 at 177.

⁵ *Re Sale Hotel and Botanical Gardens Ltd, ex p Hesketh* (1898) 78 LT 368 at 370, CA.

⁶ *Re Ambrose Lake Tin and Copper Mining Co, ex p Taylor, ex p Moss* (1880) 14 ChD 390, CA.

⁷ *Ie* in the Insolvency Act 1986 s 212(1) (as amended).

⁸ *Ibid* s 212(2) (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 18(b), Sch 17). The amendment made to these provisions does not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003, in which

event the reference in the Insolvency Act 1986 s 212(1) (as amended) to any misfeasance or breach of any fiduciary or other duty in relation to the company also includes a reference to any misfeasance or breach of any fiduciary or other duty by a person who has acted as an administrator of the company: see s 212(2) (as originally enacted); the Enterprise Act 2002 s 249(1), (2); and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

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692 Misfeasance or breach of fiduciary or other duty

NOTE 1--See also *French v Cipolletta* [2009] All ER (D) 155 (May).

NOTE 8--See *Re Newscreen Media Group (in liquidation)*; *Hardy v McLoughlin* [2009] EWHC 944 (Ch), [2009] 2 BCLC 353.

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693. Promoters.

A misfeasance application may properly be brought against promoters in respect of undisclosed profits received by them¹.

¹ *Gluckstein v Barnes* [1900] AC 240, HL; *Re Sale Hotel and Botanical Gardens Ltd, ex p Hesketh* (1898) 78 LT 368, CA; *Re Leeds and Hanley Theatres of Varieties Ltd* [1902] 2 Ch 809, CA; *Lydney and Wigpool Iron Ore Co v Bird* (1886) 33 ChD 85, CA; and see COMPANIES vol 14 (2009) PARA 54. See also *Re Innes & Co Ltd* [1903] 2 Ch 254, CA; *Re Sunlight Incandescent Gas Lamp Co Ltd* (1900) 16 TLR 535; *Re Lady Forrest (Murchison) Gold Mine Ltd* [1901] 1 Ch 582. See further para 692 note 1 ante.

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694. Directors.

The following are some of the cases in which a misfeasance application may be brought against directors¹: where they have received money from promoters in pursuance of an agreement to indemnify them against loss on qualification shares²; where they have received money from vendors to the company to pay for qualification shares³; where they receive debentures or their qualification or other shares from a promoter or a promoter pays for them⁴; where they are nominated by an underwriter of a further issue of capital and receive qualification shares from him⁵; where they have improperly received presents or remuneration out of the company's assets⁶; where they have purchased shares from promoters at less than par⁷; where they have procured the purchase from themselves by the company of shares in another company at a fraudulent over-valuation⁸; and where they fail to disclose the fact that they are vendors of property to the company⁹.

A misfeasance application is the proper mode of procedure where shares or debentures have been improperly issued to directors at a discount or undervalue¹⁰; or where directors have improperly paid dividends out of capital¹¹; or where they have knowingly allotted shares to minors¹²; or where they have improperly received directors' fees¹³; or where they have acted ultra vires¹⁴, or improperly invested or paid away the company's money¹⁵; or where they have improperly received commissions¹⁶; or where an act benefiting directors is a preference¹⁷.

1 See, however para 692 note 1 ante.

2 *Archer's Case* [1892] 1 Ch 322, CA.

3 *Hay's Case* (1875) 10 Ch App 593; *Carling, Hespeler and Walsh's Cases* (1875) 1 ChD 115, CA; *Brown's Case* (1873) 9 Ch App 102; *Re Postage Stamp Automatic Delivery Co* [1892] 3 Ch 566.

4 *Re Anglo-French Co-operative Society, ex p Pelly* (1882) 21 ChD 492, CA; *Pearson's Case* (1877) 5 ChD 336, CA; *Re Carriage Co-operative Supply Association* (1884) 27 ChD 322 (which also deals with the joint and several liability of directors when all take with knowledge); *Re London and South Western Canal Ltd* [1911] 1 Ch 346. As to the measure of damages in case of shares improperly received see also COMPANIES vol 14 (2009) PARA 55.

5 *De Ruvigne's Case* (1877) 5 ChD 306, CA. See also COMPANIES vol 14 (2009) PARA 497.

6 *Re George Newman & Co* [1895] 1 Ch 674, CA; *Re Eskern Slate and Slab Quarries Co Ltd, Clarke and Helden's Cases* (1877) 37 LT 222; *Re London Gigantic Wheel Co Ltd* (1908) 24 TLR 618, CA; *Merchants' Fire Office Ltd v Armstrong* (1901) 17 TLR 709, CA. Cf *Curtis's Furnishing Stores Ltd v Freedman* [1966] 2 All ER 955, [1966] 1 WLR 1219 (procuring by purchase of release of vendor's indebtedness to company made a term of sale of vendor's controlling shares; not necessarily misfeasance on part of vendor as release could be procured by purchasers or payment).

7 *Weston's Case* (1879) 10 ChD 579, CA.

8 *Re VGM Holdings Ltd* [1942] Ch 235, [1942] 1 All ER 224, CA.

9 In *Re Lady Forrest (Murchison) Gold Mine Ltd* [1901] 1 Ch 582, where directors had failed to disclose what profit was made on a sale by them to the company, it was said that the remedy was by rescission, and not by misfeasance proceedings. It was later held that promoters who fail to disclose that they were the vendors to the company may, on a misfeasance application, be made to pay damages: *Re Leeds and Hanley Theatres of Varieties Ltd* [1902] 2 Ch 809, CA.

10 *Campbell's Case* (1876) 4 ChD 470; *Re London and Colonial Finance Corp'n Ltd* (1897) 77 LT 146, CA; *Hirsche v Sims* [1894] AC 654, PC. As to the statutory prohibition on the allotment of shares at a discount see COMPANIES vol 15 (2009) PARA 1111.

11 *Dovey v Cory* [1901] AC 477, HL; *Re National Funds Assurance Co* (1878) 10 ChD 118; *Re Mercantile Trading Co, Stringer's Case* (1869) 4 Ch App 475; *Rance's Case* (1870) 6 Ch App 104; *Re Dependable Upholstery Ltd* [1936] 3 All ER 741. The liability is joint and several: *Re National Funds Assurance Co* supra; *Flitcroft's Case* (1882) 21 ChD 519, CA; *Re Oxford Benefit Building and Investment Society* (1886) 35 ChD 502; *Leeds Estate Building and Investment Co v Shepherd* (1887) 36 ChD 787. It has been said that the liquidator may recover against the directors even if all the creditors have been paid off (*Re National Bank of Wales Ltd* [1899] 2 Ch 629, CA; affd sub nom *Dovey v Cory* [1901] AC 477, HL); but, when in such a case there is enough in hand to pay the costs of winding up and the liquidator, the court may refuse, even on the liquidator's application, to order directors to pay what has been paid as dividend out of capital where the result would be that the money would go to those who had received the illegal dividend (*Re GJ Tilling & Sons Ltd* (1906) Times, 16 May). Directors are not liable for paying dividends out of capital if it subsequently appears that in fact there were not sufficient profits, when they have acted after making proper inquiry and exercising due care and on reasonable grounds: *Re Kingston Cotton Mill Co (No 2)* [1896] 1 Ch 331 (revsd on appeal on another point [1896] 2 Ch 279, CA); and see COMPANIES vol 15 (2009) PARA 1412.

12 *Re Crenver and Wheal Abraham United Mining Co, ex p Wilson* (1872) 8 Ch App 45.

13 *Re Public Supply Association* [1880] WN 106.

14 *Re Sharp, Re Bennett, Masonic and General Life Assurance Co v Sharpe* [1892] 1 Ch 154, CA.

15 *Re Lands Allotment Co* [1894] 1 Ch 616, CA; *Re Imperial Land Co of Marseilles, Re National Bank* (1870) LR 10 Eq 298; *Re Neath Harbour Smelting and Rolling Works* (1887) 56 LT 727; cf *Re VGM Holdings Ltd* [1942] Ch 235, [1942] 1 All ER 224, CA. It is not a breach of fiduciary duty for a director to advance monies for the benefit of a related company if he honestly believes that the company will repay the monies: *Re Pantone 485 Ltd, Miller v Bain* [2002] 1 BCLC 266.

16 *Re Oxford Benefit Building and Investment Society* (1886) 35 ChD 502.

17 *Re Washington Diamond Mining Co* [1893] 3 Ch 95, CA; *West Mercia Safetywear Ltd v Dodd* [1988] BCLC 250, 4 BCC 30, CA; *Yukong Lines Ltd of Korea v Rendsburg Investment Corp'n of Liberia* [1998] 4 All ER 82, [1998] 1 WLR 294. The fiduciary duty of directors to the creditors of a company when it is insolvent does not extend to placing the company into liquidation where the company is already in receivership: *Re Joshua Shaw & Sons Ltd* [1989] BCLC 362, 5 BCC 188 (where the failure to place the company into liquidation resulted in the entirety of the claims of the unsecured creditors being statute-barred: see further para 758 post). As to preferences see para 843 et seq post.

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695. Auditors.

A misfeasance application is a proper remedy where an auditor, by his neglect of duty, has enabled property of the company to be improperly paid away, as, for example, in dividends¹.

¹ *Re London and General Bank (No 2)* [1895] 2 Ch 673, CA; *Re Kingston Cotton Mill Co (No 2)* [1896] 2 Ch 279, CA; *Leeds Estate Building and Investment Co v Shepherd* (1887) 36 ChD 787; *Re Republic of Bolivia Exploration Syndicate Ltd* [1914] 1 Ch 139; *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407, CA; *Re Thomas Gerrard & Son Ltd* [1968] Ch 455, [1967] 2 All ER 525; *Mutual Reinsurance Co Ltd v Peat Marwick Mitchell & Co* [1997] 1 BCLC 1, [1996] BCC 1010, CA. However, see also para 692 note 1 ante.

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696. Liquidator, administrator and administrative receiver.

A liquidator or administrative receiver may be brought to account on a misfeasance application when he has misapplied or become liable or accountable for the company's money, or been guilty of misfeasance or breach of fiduciary or other duty in relation to the company¹. In the case of a liquidator, the latter applies to any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator of the company². The following are cases in which a misfeasance application may be brought against a liquidator: where he has distributed its assets without providing for the claim of a particular creditor³, or where he has on his own responsibility negligently compromised a claim against the company which was invalid and paid away the amount for which it was compromised⁴, or where he has negligently admitted a claim⁵. A liquidator cannot be brought to account on a summons for a wrong done to an individual shareholder⁶. He is not liable for loss occasioned by his employees' criminal acts if he properly selected and employed the employees⁷.

1 See para 692 note 1 ante. As to the requirement of obtaining leave where the liquidator has had his release see para 689 ante.

2 See the Insolvency Act 1986 s 212(2) (as amended); and para 692 ante.

3 *Re New Zealand Joint Stock and General Corpn Ltd* (1907) 23 TLR 238; *Re Watchmakers' Alliance and Ernest Goode's Stores Ltd* (1905) 5 TC 117 (where the applications were by the Crown, the liquidator having failed to provide for income tax). As to claims against the liquidator after dissolution where he has failed to provide for creditors see para 932 post.

4 See *Re Windsor Steam Coal Co (1901) Ltd* [1929] 1 Ch 151, CA (cited in para 566 note 7 ante).

5 *Re Home and Colonial Insurance Co Ltd* [1930] 1 Ch 102.

6 *Re Hill's Waterfall Estate and Gold Mining Co* [1896] 1 Ch 947 at 953.

7 *Jobson v Palmer* [1893] 1 Ch 71.

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696 Liquidator, administrator and administrative receiver

NOTE 2--Where a liquidator has the benefit of a freezing order he must progress proceedings promptly: *Sefton v Gallucci* [2008] EWHC 738 (Ch), [2008] BPIR 1588 (improper use of freezing order procedure).

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697. Set-off and limitation of claims.

Claims against the company cannot be set off against the amount ordered to be paid in misfeasance proceedings¹, nor may the liquidator set off the amount against an assignee of a dividend owing to the respondent as a creditor of the company².

Where the claim is founded upon any fraud or fraudulent breach of trust to which the respondent was party or privy, or is a claim to recover trust property or the proceeds of it in the possession of the respondent or previously received by him and converted to his use, no limitation period under the Limitation Act 1980 applies to the claim³. Where the claim is not of such a nature, that Act may effectively be pleaded, as, for example, by directors who have acted honestly but have made an improper investment⁴, or improperly paid dividends⁵, or by an auditor who has merely neglected his duties⁶, or by a secretary who has been negligent⁷.

1 *Re Anglo-French Co-operative Society, ex p Pelly* (1882) 21 ChD 492, CA; *Re Exchange Banking Co, Flitcroft's Case* (1882) 21 ChD 519, CA; *Re Carriage Co-operative Supply Association* (1884) 27 ChD 322; *Re Etic Ltd* [1928] Ch 861; *Manson v Smith (liquidator of Thomas Christy Ltd)* [1997] 2 BCLC 161, CA; *Smith (Administrator of Cosslett (Contractors) Ltd v Bridgend County Borough Council* [2001] UKHL 58 at [35], [2002] 1 AC 336 at [35], [2002] 1 All ER 292 at [35] per Lord Hoffmann. It has been held that this principle applies where the company sues to recover a loan granted by a company to a director in breach of the Companies Act 1985 s 330: *Re a Company (No 1641 of 2003)* [2003] EWHC 2652 (Ch), [2004] 1 BCLC 210.

2 *Re Milan Tramways Co, ex p Theys* (1884) 25 ChD 587, CA; *Re Goy & Co Ltd, Farmer v Goy & Co Ltd* [1900] 2 Ch 149; *Re Leeds and Hanley Theatres of Varieties Ltd* [1904] 2 Ch 45; cf *Re Palmer's Decoration and Furnishing Co* [1904] 2 Ch 743.

3 Limitation Act 1980 s 21(1). As to the application of s 21(1) to directors cf *Re Lands Allotment Co* [1894] 1 Ch 616, CA; *Re National Bank of Wales Ltd* [1899] 2 Ch 629 at 663, CA (affd sub nom *Dovey v Cory* [1901] AC 477, HL). As to its general application see LIMITATION PERIODS vol 68 (2008) PARA 1140 et seq. In *Halls v O' Dell* [1992] QB 393, [1992] 2 WLR 308, CA, there was held to be no limitation period applicable under the Limitation Act 1980 to a misfeasance claim, although the Rules of the Supreme Court applied to an application to strike out for want of prosecution. A secret profit received by a promoter may be fraudulent even in the absence of moral fraud: *Re Sale Hotel and Botanical Gardens Co Ltd, Hesketh's Case* (1897) 77 LT 681; revsd without affecting this point (1898) 78 LT 368, CA. As to the effect of laches see *Metropolitan Bank v Heiron* (1880) 5 ExD 319, CA (decided before the passing of the Trustee Act 1888 s 8, which is now re-enacted with modifications by the Limitation Act 1980 s 21(1)); *Re Sale Hotel and Botanical Gardens Co Ltd, Hesketh's Case* supra.

4 *Re Lands Allotment Co* [1894] 1 Ch 616, CA; *Whitwam v Watkin* (1898) 78 LT 188.

5 *Re National Bank of Wales Ltd* [1899] 2 Ch 629 at 663, CA; affd sub nom *Dovey v Cory* [1901] AC 477, HL.

6 *Leeds Estate, Building and Investment Co v Shepherd* (1887) 36 ChD 787. As to the date from which time runs see LIMITATION PERIODS vol 68 (2008) PARA 901 et seq.

7 See *Municipal Freehold Land Co Ltd v Pollington* (1890) 59 LJ Ch 734.

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697 Set-off and limitation of claims

NOTE 3--See also *Re Eurocruit Europe Ltd (in liquidation)*; *Goldfarb v Poppleton* [2007] EWHC 1433 (Ch), [2007] 2 BCLC 598.

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698. Misfeasance claims as assets.

Claims in respect of misfeasance, being choses or things in action¹ which may be assigned by the liquidator in the company's name, pass under an assignment of all its assets, property and effects². They are comprised in a charge by debentures on the company's undertaking and property, present and future, although subject to the costs incurred by the liquidator in taking misfeasance proceedings for the purposes of recovering them³. An order may be made in a debenture holders' action directing the receiver to sell the misfeasance claims by auction⁴.

¹ See *Re Park Gate Waggon Works Co* (1881) 17 ChD 234, CA; and CHOSSES IN ACTION vol 13 (2009) PARA 7.

² *Re Park Gate Waggon Works Co* (1881) 17 ChD 234, CA. As to the power of a liquidator to sell the assets of a company (which may include choses or things in action) see the Insolvency Act 1986 s 167; and para 744 post.

³ *Re Anglo-Austrian Printing and Publishing Union, Brabourne v Anglo-Austrian Printing and Publishing Union* [1895] 2 Ch 891. Other costs of the liquidator cannot be deducted: *Re Anglo-Austrian Printing and Publishing Union, Brabourne v Anglo-Austrian Printing and Publishing Union* supra. As to misfeasance money recovered after the crystallisation of a debenture see *Re Yagerphone Ltd* [1935] Ch 392. A claim under the Insolvency Act 1986 s 214 (wrongful trading: see para 914 post) is not a claim of the company and cannot be sold by a liquidator under Sch 4 para 6 (see para 577 ante): *Re Oasis Merchandising Services Ltd, Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA.

⁴ *Wood v Woodhouse and Rawson United* [1896] WN 4.

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699. Costs against official receiver or liquidator.

If the official receiver or liquidator institutes misfeasance proceedings, the court has jurisdiction to order him personally to pay the costs¹. A liquidator will not be ordered to give security for the costs of a misfeasance summons on the ground of poverty², or, apparently, in any other case³.

1 *Re W Powell & Sons* [1896] 1 Ch 681. An appeal, however, lies from an order against him to pay costs: *Re Raynes Park Golf Club, ex p Official Receiver* [1899] 1 QBD 961. An official receiver ought not, in cases where he is indemnified against costs, to allow an application to be made unless he is satisfied of the propriety of the application: *Re Anglo-Sardinian Antimony Co* (1894) 38 Sol Jo 682; *Re Piccadilly Chambers Co* (1894) 1 Mans 370; and see *Re New Zealand Loan and Mercantile Agency Co Ltd* (1894) 71 LT 693. As to costs generally see paras 594 ante, 1096 et seq post. As to the official receiver see para 503 et seq ante. As to liquidators see para 555 et seq ante.

2 *Re Strand Wood Co Ltd* [1904] 2 Ch 1, CA.

3 *Re W Powell & Sons* [1896] 1 Ch 681.

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(iv) Relation back of Winding-up Order

700. Retrospective effect of winding-up order.

A compulsory winding-up order has a retrospective effect¹. Any proceeding for rescinding contracts to take shares, commenced between the dates of the presentation of the petition and the winding-up order, is defeated². Every disposition of the company's property, including choses or things in action, made after the commencement of the winding up by the court³ is void unless the court otherwise orders⁴. In a proper case, the court may order otherwise while the petition is still pending and before an order has been made on it⁵. In the exercise of its discretion, the court will do its best to ensure that the interests of the unsecured creditors will not be prejudiced, and will validate transactions entered into in good faith in the ordinary course of trade and completed before the date of the winding-up order⁶, as where a charge on calls is made⁷ or a debenture is issued in good faith to avert the ruin of the company⁸. Where, in the case of a solvent company, evidence is placed before the court that the directors consider a particular disposition to be necessary or expedient in the interests of the company, for reasons which the court considers an intelligent and honest person could reasonably hold, the court will sanction the disposition even if a contributory opposes it, unless the contributory adduces compelling evidence proving that the disposition is likely to injure the company⁹.

The court will deal with each case on its own facts and particular circumstances, special regard being had to whether the disposition has reduced the assets available in the winding up¹⁰, and to the question of the good faith and honest intention of the parties concerned¹¹. The transaction must, however, be completed and not still remain in contract at the date of the winding-up order¹². A general lien taking effect on property after the commencement of the winding up is a disposition of property; but, if it takes effect prior to the winding-up order, it may be confirmed by the court¹³. Completion of a specifically enforceable contract for the sale of land, entered into before presentation of the winding-up petition, does not constitute a disposition of the company's property¹⁴.

The payment of past debts will not be sanctioned. A creditor who receives payment between the petition and the winding-up order will normally be compelled to refund¹⁵; and directors who make improper payments out of the company's assets are themselves liable to the company for the money paid away¹⁶. Where a creditor's winding-up petition is adjourned on the terms of the company's paying part of the debt and promising to pay the remainder, and, on failure to pay the remainder, the creditor brings on his petition and obtains a winding-up order, he is bound to repay the money already paid to him¹⁷.

In the event of a winding-up order being made, payment of a debt to the company after the presentation of the petition and before the making of the order is not a payment of the company's property to a wrong person, and the company may give a valid discharge for it¹⁸. A transfer of shares in favour of a company may be validly registered, even though proceedings have commenced for the winding up of the transferee company¹⁹.

Where validation of a disposition which has already been entered into is sought, the fact that the disposition would have been sanctioned, if sanction had been sought before the disposition was carried out, does not by itself justify its ex post facto validation²⁰.

A transaction may be validated in part only²¹.

1 As to the commencement of the winding up see para 489 ante; as to the effect of a winding-up order on execution see para 888 post; and as to its effect on the creation of a floating charge see para 861 et seq post.

2 *Kent v Freehold Land and Brick-Making Co* (1868) 3 Ch App 493.

3 See para 489 ante.

4 Insolvency Act 1986 s 127(1) (s 127(1) renumbered, and s 127(2) added, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 15). The amendments made to these provisions do not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003: Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). The Insolvency Act 1986 s 127(1) (as renumbered) has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under Sch B1 para 40 (as added) (see para 261 ante): s 127(2) (as so added).

A shareholder is entitled to apply for an order even though he is not a party to the disposition: *Re Argentum Reductions (UK) Ltd* [1975] 1 All ER 608, [1975] 1 WLR 186. So also are administrative receivers in respect of property subject to a floating charge: *Merton v Hammond Suddards* [1996] 2 BCLC 470. A creditor of the shareholder in the applicant company has been permitted to be heard: *Re Rescupine Ltd* [2003] EWHC 216 (Ch), [2003] 1 BCLC 661. Where the property transferred is charged after the disposition, the chargee has standing: *Re Dewrun Ltd, Royal Bank of Scotland v Bhardwaj* [2002] BCC 57. As to what constitutes a disposition of the company's property see *Re J Leslie Engineers Co Ltd* [1976] 2 All ER 85, [1976] 1 WLR 292; *Re Gray's Inn Construction Co Ltd* [1980] 1 All ER 814, [1980] 1 WLR 711, CA (payments out of company's bank account); *Re Margaret Pty Ltd, Hamilton v Westpac Banking Corp* [1985] BCLC 314, NSW SC (realisation of assets subject to a floating charge not dispositions of the company's property under the analogous provision in the Companies (New South Wales) Code); *Sowman v David Samuel Trust Ltd* [1978] 1 All ER 616, [1978] 1 WLR 22. Where cheques are drawn on a company's account, whether in credit or overdrawn, after the presentation of a petition the amounts paid are not recoverable from the bank, but only from the payees of the cheques: *Hollicourt (Contracts) Ltd (in liquidation) v Bank of Ireland* [2001] Ch 555, [2001] 1 All ER 289, CA (now the leading case on the operation of bank accounts following presentation of a petition; certain obiter dicta in *Re Gray's Inn Construction Co Ltd* supra were not followed). See also *Coutts & Co v Stock* [2000] 2 All ER 56, [2000] 1 WLR 906. The payment of a cheque into a bank account which is in credit is not a disposition of the company's property, being the mere conversion of one asset into another: *Re Barn Crown Ltd* [1994] 4 All ER 42, [1995] 1 WLR 147. Payments into an overdrawn bank account do, however, constitute dispositions of the company's property: *Re Tain Construction Ltd, Rose v AIB Group (UK) plc* [2003] EWHC 1737 (Ch), [2003] 1 WLR 2791.

5 *Re Al Levy (Holdings) Ltd* [1964] Ch 19, [1963] 2 All ER 556 (not following *Re Miles Aircraft Ltd* [1948] Ch 188, [1948] 1 All ER 225); *Re Operator Control Cabs Ltd* [1970] 3 All ER 657n; *Re Bransfield Engineering Ltd* (1985) 1 BCC 99, 409 (prospective validation will only be given in special circumstances where it is certain that the company will be wound up); *Re Sugar Properties (Derisley Wood) Ltd* [1988] BCLC 146, 3 BCC 88 (sale validated on terms). Urgent applications pursuant to the Insolvency Act 1986 s 127 (as amended) prior to any winding up order being made must be made to the judge and, unless otherwise ordered, must be heard in public: see *Practice Direction--Insolvency Proceedings* para 5.1(2). For the practice in relation to validation orders on a contributory's petition see *Practice Direction--Applications under the Companies Act 1985, Part VII of the Financial Services and Markets Act 2000 and the Insurance Companies Act 1982* PD49B para 9; and paras 468-469 ante.

6 *Re Wiltshire Iron Co, ex p Pearson* (1868) 3 Ch App 443 at 447. See also *Re J Leslie Engineers Co Ltd* [1976] 2 All ER 85, [1976] 1 WLR 292; *Re Gray's Inn Construction Co Ltd* [1980] 1 All ER 814, [1980] 1 WLR 711, CA; *Re Richbell Information Services Inc v Atlantic General Investment Trust Ltd* [1999] BCC 871.

7 *Gibbs and West's Case* (1870) LR 10 Eq 312.

8 *Re Park, Ward & Co Ltd* [1926] Ch 828; *Re Steane's (Bournemouth) Ltd* [1950] 1 All ER 21. In such a case the court may allow the debenture holder to add the costs of the necessary application to his security: *Re Park, Ward & Co Ltd* supra; *Re Steane's (Bournemouth) Ltd* supra.

9 *Re Burton and Deakin Ltd* [1977] 1 All ER 631, [1977] 1 WLR 390. Cf *Re a Company (No 007523 of 1986)* [1987] BCLC 200, 3 BCC 57 (sanction refused on contributory's petition because of doubts as to company's solvency).

10 *Re Gray's Inn Construction Co Ltd* [1980] 1 All ER 814, [1980] 1 WLR 711, CA; *Re Tramway Building & Construction Co Ltd* [1988] Ch 293, [1988] 2 WLR 640.

11 *Re Steane's (Bournemouth) Ltd* [1950] 1 All ER 21 at 25; approved in *Re Clifton Place Garage Ltd* [1970] Ch 477, [1970] 1 All ER 353, CA. The court should not be quick to condemn an emergency decision to keep a business going provided it is reasonable: *Re Clifton Place Garage Ltd* supra at 493 and 359; *Re TW Construction Ltd* [1954] 1 All ER 744, [1954] 1 WLR 540.

12 *Re Wiltshire Iron Co, ex p Pearson* (1868) 3 Ch App 443; *Re Oriental Bank Corpn, ex p Guillemin* (1884) 28 ChD 634.

13 *Re Llangennech Coal Co* (1887) 56 LT 475; cf *Wiltshire Iron Co v Great Western Rly Co* (1870) LR 6 QB 101 (affd (1871) LR 6 QB 776).

14 *Re French's (Wine Bar) Ltd* [1987] BCLC 499, 3 BCC 173. Where, however, the contract was conditional or voidable, the waiver or confirmation of the contract, or any variation of its terms, might constitute a disposition of the company's property and, unless the contract is plainly specifically enforceable, it is prudent to seek the prior approval of the court for the completion of the contract: *Re French's (Wine Bar) Ltd* supra.

15 *Re Civil Service and General Store Ltd* (1887) 57 LJ Ch 119 (distinguished in *Re TW Construction Ltd* [1954] 1 All ER 744, [1954] 1 WLR 540); *National Bank's Case* (1873) 28 LT (European Arbitration) 92; *Re Western Welsh International System Buildings Ltd* (1985) 1 BCC 99, 296. As to preferences see para 846 post.

16 *Re Neath Harbour Smelting and Rolling Works* (1887) 56 LT 727.

17 *Re Liverpool Civil Service Association, ex p Greenwood* (1874) 9 Ch App 511, distinguished in *Re TW Construction Ltd* [1954] 1 All ER 744, [1954] 1 WLR 540. The Insolvency Act 1986 s 127 (as amended) does not of itself define the remedies which are available to a liquidator to enable the recovery of a void disposition, and thus the general law applies: *Re J Leslie Engineers Co Ltd* [1976] 2 All ER 85, [1976] 1 WLR 292; *Re Tain Construction Ltd, Rose v AIB Group (UK) plc* [2003] EWHC 1737 (Ch), [2003] 1 WLR 2791, [2003] 2 BCLC 374 (a defence of change of position is in principle available to the recipient of a disposition).

18 *Mersey Steel and Iron Co v Naylor, Benzon & Co* (1884) 9 App Cas 434 at 440, HL.

19 *Re Barned's Banking Co, ex p Contract Corpn* (1867) 3 Ch App 105.

20 *Re Gray's Inn Construction Co Ltd* [1980] 1 All ER 814, [1980] 1 WLR 711, CA; *Re Tramway Building & Construction Co Ltd* [1988] Ch 293, [1988] 2 WLR 640. Validatory orders will generally fall into one of three categories: (1) where a particular asset is to be sold; (2) where the company's business is to be continued for the benefit of creditors; (3) where the company is solvent: *Re Fairway Graphics Ltd* [1991] BCLC 468. Where the court is satisfied that the company is solvent and able to pay its debts as they fall due, then the court will generally grant a validating order where a winding-up petition has been presented by a creditor: *Re Fairway Graphics Ltd* supra. This general rule does not apply where a petition has been presented by the Secretary of State alleging improper conduct of the company vis-a-vis its members: *Re a Company (No 007130 of 1998)* [2000] 1 BCLC 582. Where a company's bankers receive notice of a winding-up petition presented against one of its customers, the bankers will almost invariably freeze the account, as a result of the decision in *Re Gray's Inn Construction Co Ltd* supra. Although it seems that the bank will not be liable in respect of payments after the presentation of a petition from the company's bank account (whether in credit or, obiter, in debit) the practice of banks in freezing accounts after they had notice of the petition has apparently met with approval: see *Hollis Court (Contracts) Ltd v Bank of Ireland* [2001] Ch 555 at 559, [2001] All ER 289 at 291, CA, per Mummery LJ. This practice continues to be the normal and prudent practice of banks and hence where the account is frozen, the company will need to apply for anticipatory relief. Anticipatory orders to allow the continuation of the company's trading may be granted if either the company is solvent or the continuation of trading will not prejudice the creditors: *Re a Company (No 007523 of 1986)* [1987] BCLC 200, 3 BCC 57. In *Re a Company (No 00687 of 1991)* [1992] BCLC 133 at 135, [1991] BCC 210 at 212, it was recommended that any validation order unfreezing the company's bank accounts should include the following proviso: 'Provided that [the relevant bank] should be under no obligation to verify for itself whether any transaction through the company's bank accounts is in the ordinary course of business, or that it represents full market value for the relevant transaction'.

21 *Re Dewrun Ltd, Royal Bank of Scotland v Bhardwaj* [2002] BCC 57.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(iv) Relation back of Winding-up Order/701. Transfer of shares.

701. Transfer of shares.

Any transfer of shares in a company¹ made after the commencement of the winding up² is void unless the court otherwise orders³. The validity of the transfer is not affected⁴ as between the parties to it, although the court will not alter the register to give effect to it except for the benefit of the company and those interested in its assets⁵.

Where a contract for transfer is made after the winding up commenced, both transferor and transferee being ignorant of the presentation of the petition, the court will not sanction the transfer and place the transferee on the register, because specific performance of the agreement would not be ordered⁶ in such a case⁷.

A transfer of shares made after the presentation of the petition is not avoided unless or until a winding-up order is made⁸.

1 Or, in the case of a winding up in relation to a limited liability partnership, any transfer by a member of the partnership of his interest in the property of the partnership: see s 127(1) (as renumbered: see note 3 infra); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 As to the commencement of the winding up see para 489 ante.

3 Insolvency Act 1986 s 127(1) (s 127(1) renumbered, and s 127(2) added, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 15). The amendments made to these provisions do not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003: Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). The Insolvency Act 1986 s 127(1) (as renumbered) has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under Sch B1 para 40 (as added) (see para 261 ante): s 127(2) (as so added).

4 *Re Onward Building Society* [1891] 2 QB 463, CA; *Chapman v Shepherd, Whitehead v Izod* (1867) LR 2 CP 228; *Rudge v Bowman* (1868) LR 3 QB 689.

5 *Re Onward Building Society* [1891] 2 QB 463 at 483, CA; *Re Discoverers Finance Corpn, Lindlar's Case* [1910] 1 Ch 312, CA; *Re Surma Valley Saw Mills Ltd* 1917 SC 105, Ct of Sess. The court will not give effect to such a transfer where the provisions of the articles relating to transfer have not been complied with: see *Re Overend, Gurney & Co, Walker's Case* (1866) LR 2 Eq 554.

6 Cf *Sullivan v Henderson* [1973] 1 All ER 48, [1973] 1 WLR 333 (where, after the commencement of the winding up, the court refused to order the specific performance of a contract, previously made, for the sale of shares).

7 *Emmerson's Case* (1866) 1 Ch App 433 at 436. Where the transfer is made before the winding up commenced, but is not registered, the court will usually rectify the register: see *Fyfe's Case* (1869) 4 Ch App 768; *Ward and Garfit's Case* (1867) LR 4 Eq 189; and para 730 post.

8 *Re Tumacacori Mining Co* (1874) LR 17 Eq 534 at 537.

UPDATE

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702. Alteration of members' status.

Any alteration in the status of members¹ made after the commencement of the winding up² other than that occasioned by a transfer sanctioned by the court³ is also void, unless the court otherwise orders⁴. Thus an arrangement, after the winding-up petition is presented, by which the shareholders on whose shares a sum is unpaid are to pay an amount equal to that sum, and the payment is to be treated either as a loan to the company or as payment of the sum unpaid on the shares, according as the company is able to continue its business or is wound up, is void⁵. Where by virtue of a six months' notice, expiring after the commencement of the winding up, preference shareholders exercise an option granted to them by the resolution creating their shares to convert the preference shares into ordinary shares, the exercise of this option does not effect an alteration in their status and the conversion becomes effective without a court order⁶.

1 As to the meaning of 'member' see para 72 note 9 ante.

2 As to the commencement of the winding up see para 489 ante.

3 *Re National Bank of Wales, Taylor, Phillips and Rickards' Cases* [1897] 1 Ch 298 at 306, CA.

4 Insolvency Act 1986 s 127(1) (s 127(1) renumbered, and s 127(2) added, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 15). The amendments made to these provisions do not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003: Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). The Insolvency Act 1986 s 127(1) (as renumbered) has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under Sch B1 para 40 (as added) (see para 261 ante): s 127(2) (as so added).

5 *Barge's Case* (1868) LR 5 Eq 420.

6 *Re Blaina Colliery Co Ltd* (1926) 70 Sol Jo 404.

UPDATE

438-938 Winding Up by the Court

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(v) Contributories

A. WHO ARE CONTRIBUTORIES

703. Meaning of 'contributory'.

'Contributory' means every person¹ liable to contribute to the assets of a company in the event of its being wound up, and includes, for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, any person alleged to be a contributory². Thus, since every member of the company is primarily liable to contribute, subject to the proviso limiting the amount which he may be called upon to pay³, a holder of fully paid-up shares is a contributory⁴. Since he is no longer liable to make any contribution to the assets, the holder of fully paid-up shares will not, however, be placed on the list of contributories except at his own desire⁵ or where there is a likelihood of the return of surplus assets⁶.

A person who is merely a debtor to the company⁷, or who is liable to indemnify a trustee on the register⁸, is not a contributory. A person who is liable to contribute to the assets by virtue of a declaration by the court to such effect under the provisions relating to fraudulent trading⁹, wrongful trading¹⁰ or misfeasance¹¹ is also not a contributory¹².

A reference in a company's articles to a contributory does not, unless the context requires, include a person who is a contributory only by virtue of the statutory provisions¹³ imposing liability on past directors and shareholders¹⁴.

1 In relation to the winding up of a limited liability partnership, the reference to 'every person' is a reference to every past and present member of the partnership: see the Insolvency Act 1986 s 79(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Insolvency Act 1986 s 79(1). As to contributories in the case of an unregistered company see para 1153 post; and as to persons holding shares as trustees see para 712 post. As to who are contributories in the case of a company registered under the Companies Act 1985 Pt XXI Ch II (ss 680-690) (as amended). See also COMPANIES vol 14 (2009) PARA 47.

3 See the Insolvency Act 1986 s 74(1), (2); and para 704 et seq post.

4 *Re National Savings Bank Association* (1866) 1 Ch App 547; *Re Anglesea Colliery Co* (1866) 1 Ch App 555; *Alipour v UOC Corpn* [2002] EWHC 937 (Ch), [2002] 2 BCLC 770; cf *Re Driffeld Gas Light Co* [1898] 1 Ch 451 at 454. In *Re Aidall Ltd* [1933] Ch 323 at 328, 392 (affd [1933] Ch 334, CA), Maugham J was of opinion that, in the provisions now incorporated into the Insolvency Act 1986 ss 74-82, 'contributories' was used in the narrow sense of holders of partly paid shares, although in other provisions it was used to include holders of fully paid shares; but see *Re Consolidated Gold Fields of New Zealand Ltd* [1953] Ch 689 at 697, [1953] 1 All ER 791 at 794 (cited in para 719 note 1 post), where Roxburgh J considered that such a distinction was irreconcilable with *Re Anglesea Colliery Co* supra; *Re Phoenix Oil and Transport Co Ltd* [1958] Ch 560, [1957] 3 All ER 218. A contributory might establish his status as such by reason of an estoppel: *Alipour v UOC Corpn* supra.

5 *Leifchild's Case* (1865) LR 1 Eq 231; *Re Marlborough Club Co* (1868) LR 5 Eq 365.

6 *Re Aidall Ltd* [1933] Ch 323 at 333 per Maugham J; affd [1933] Ch 334, CA.

7 *Re European Society Arbitration Acts, ex p British Nation Life Assurance Association (Liquidators)* (1878) 8 ChD 679 at 708, CA.

8 *King's Case* (1871) 6 Ch App 196; *Williams' Case* (1875) 1 ChD 576; *Mitchell's Case* (1870) LR 9 Eq 363; *Re National Bank of Wales Ltd, Massey and Giffin's Case* [1907] 1 Ch 582. It is different when the beneficiary has contracted with the company to take the shares: *Re Hercules Insurance Co, Pugh and Sharman's Case* (1872) LR 13 Eq 566; *Richardson's Case* (1875) LR 19 Eq 588; *Re Wheal Emily Mining Co, Cox's Case* (1863) 4 De GJ & Sm 53.

9 *le the Insolvency Act 1986 s 213: see para 911 post.*

10 *le ibid s 214: see para 914 post.*

11 *Re AMF International Ltd* [1996] 1 WLR 77, [1995] 2 BCLC 529.

12 *Insolvency Act 1986 s 79(2).* In relation to the winding up of a limited liability partnership, a person who is liable to contribute to the assets by virtue of a declaration by the court to such effect under the provisions relating to the adjustment of withdrawals (see s 214A (as added); and para 914 post) is also not a contributory: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3.

13 *As to the provisions imposing liability on past directors and shareholders see the Insolvency Act 1986 s 76; and para 713 post.*

14 *Ibid s 79(3).* Section 79(3) is deemed to be included in the Companies Act 1985 Pt V Ch VII (ss 159-181) (as amended) for the purposes of the Secretary of State's power to make regulations under the Companies Act 1985 s 179: *Insolvency Act 1986 s 79(3).* As to the Secretary of State see para 11 note 10 ante. Section s 79(3) does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3.

UPDATE

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703 Meaning of 'contributory'

NOTES 1, 2--*Insolvency Act 1986 s 79(1) amended: SI 2009/1941.*

NOTES 13, 14--*Insolvency Act 1986 s 79(3) amended: SI 2009/1941.*

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704. Members' liability to contribute.

When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payments of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves¹.

This liability is subject to the following qualifications:

- 1117 (1) in the case of a company limited by shares, no contribution is required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member²;
- 1118 (2) in the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up³; and
- 1119 (3) if it is a company limited by guarantee and having a share capital, every member of it is liable, in addition to the amount so undertaken to be contributed to the assets, to contribute to the extent of any sums unpaid on shares held by him⁴.

The liability of a past member is limited⁵. Provisions in an insurance policy or other contract restricting the liability of individual members on it are valid⁶. A sum due to a member as such is not to be deemed a debt of the company as against an outside creditor, but may be taken into account as between the contributories themselves⁷.

'Member' is not confined to the persons whose names were actually on the register as present or past members when the winding up commenced, but includes persons whose names ought then to have been on it⁸, and also persons to whom shares may have been validly transferred after the winding up commenced⁹. A person whose shares have been forfeited¹⁰ is not liable to contribute as a present member¹¹, but he is liable as a past member¹² unless the forfeiture took place a year or more before the commencement of the winding up¹³. If, as is usually the case¹⁴, the articles of association make such a person a debtor to the company in respect of unpaid calls, he may be sued upon the articles for those calls even though the winding up does not commence until after the expiration of a year from the forfeiture, and thus he is not liable as a contributory¹⁵.

1 Insolvency Act 1986 s 74(1). Where a limited liability partnership is wound up, it is instead provided that every present and past member of the limited liability partnership who has agreed with the other members or with the partnership that he will, in circumstances which have arisen, be liable to contribute to the assets of the partnership in the event that the partnership goes into liquidation is liable, to the extent that he has so agreed, to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves; and that a past member will only be liable if the obligation arising from such agreement survived his ceasing to be a member of the partnership: see s 74; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

As to the adjustment of the rights of contributories among themselves see para 831 post.

2 Insolvency Act 1986 s 74(2)(d). As to the application of s 74 in connection with the winding up of limited liability partnerships see note 1 supra.

- 3 See *ibid* s 74(3); and para 715 post.
- 4 See *ibid* s 74(3).
- 5 See *ibid* s 74(2)(a)-(c); and para 705 post.
- 6 See *ibid* s 74(2)(e); and para 716 post.
- 7 See *ibid* s 74(2)(f); and para 719 post.
- 8 See para 720 post.
- 9 *Re National Bank of Wales, Taylor, Phillips and Rickards' Cases* [1897] 1 Ch 298, CA.
- 10 As to the forfeiture of shares see COMPANIES vol 15 (2009) PARA 1213 et seq.
- 11 *Knight's Case* (1867) 2 Ch App 321; *Bath's Case* (1878) 8 ChD 334, CA. See also *Re State Fire Insurance Co, Webster's Case* (1862) 32 LJ Ch 135; *Needham's Case* (1867) LR 4 Eq 135.
- 12 See the cases cited in para 705 note 5 post.
- 13 See para 705 text and note 1 post.
- 14 See COMPANIES vol 15 (2009) PARA 1213 et seq.
- 15 *Ladies' Dress Association v Pulbrook* [1900] 2 QB 376, CA.

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705. Past members' liability to contribute; in general.

A past member is not liable to contribute:

- 1120 (1) if he has ceased to be a member for one year or more before the commencement of the winding up¹;
- 1121 (2) in respect of any debt or liability of the company contracted after he ceased to be a member²; and
- 1122 (3) unless it appears to the court that the existing members are unable to satisfy the contributions required³ to be made by them⁴.

He may, however, be liable in other cases, and the fact that within the period of one year or more before the commencement of the winding up his shares have been forfeited or he has transferred them will not exempt him from liability⁵.

In most cases past members are not liable to contribute at all, for the present members are primarily liable to make all the contributions required, and it is only when they are unable to make those contributions that any past member is liable⁶. If in the case of a limited company the present members have contributed to the full extent of their limited liability, but their contributions are insufficient to discharge the company's liabilities, the past members are not liable to contribute because the liability on the shares which they held has been discharged by the payments made by their present holders⁷.

To ascertain the extent of the liability of each past member, the amount of the present members' contributions must first be ascertained and applied in payment of the company's debts, without regard to the date when the debts were contracted, and any debts then remaining unsatisfied must be classified in accordance with the dates at which they were severally contracted; when the liability of past members has been so ascertained, their contributions form part of the company's general assets, and must not be applied exclusively in payment of debts contracted before they ceased to be members, but must be applied in payment of all debts without regard to the dates at which these were contracted⁸.

If, before a past member has contributed to the assets, the debts in respect of which he is liable are in any way paid off or released, so that there remains no debt or liability contracted before he ceased to be a member, his liability to contribute is extinguished⁹; but he may be liable to contribute towards the costs incurred in ascertaining and recovering the amount of the contributions of the past members¹⁰. If the sums contributed by the past members are more than sufficient to pay the unsatisfied debts for which they are liable, the balance belongs to them¹¹. A past member is not liable to contribute for the adjustment of the rights of the contributories among themselves.

A past member is a 'member' for the purpose of the provisions postponing debts due to members¹².

¹ Insolvency Act 1986 s 74(2)(a). As to the commencement of the winding up see para 489 ante. As to the possible liability under provisions of the company's articles of association of a member whose shares have been

forfeited see para 704 ante. As to the application of s 74 in connection with the winding up of limited liability partnerships see para 704 note 1 ante.

2 Ibid s 74(2)(b). See note 1 supra.

3 le in pursuance of the Companies Act 1985 and the Insolvency Act 1986.

4 Ibid s 74(2)(c). See note 1 supra.

5 *Creyke's Case* (1869) 5 Ch App 63; *Bridge's Case and Neil's Case* (1869) 4 Ch App 266; *Marshall v Glamorgan Iron and Coal Co* (1868) LR 7 Eq 129. See also note 6 infra.

6 It appears that this principle applies in relation to past members whose shares have been forfeited as well as to past members who parted with their shares by transfer: see *Bridge's Case and Neil's Case* (1869) 4 Ch App 266 at 272; *Creyke's Case* (1869) 5 Ch App 63 at 67.

7 See eg *Weston's Case* (1868) LR 6 Eq 17.

8 *Re Blakely Ordnance Co, Brett's Case, Re Oriental Commercial Bank, Morris' Case* (1873) 8 Ch App 800; *Helbert v Banner, Re Barned's Bank* (1871) LR 5 HL 28; *Webb v Whiffin* (1872) LR 5 HL 711; and see *Hudson's Case* (1871) LR 12 Eq 1; *Nevill's Case* (1870) 6 Ch App 43; *Roberts v Crowe* (1872) LR 7 CP 629. The relation between the present member and the past member is not that of principal and surety, but a statutory liability, from which the past member is not released by a compromise entered into with the court's sanction between the liquidator and the present member liable in respect of the same shares: *Helbert v Banner, Re Barned's Bank* supra.

9 *Re Blakely Ordnance Co, Brett's Case, Re Oriental Commercial Bank, Morris' Case* (1873) 8 Ch App 800. For a release to be effective it must be brought about before a call is made on the contributory: *Re Apex Film Distributors Ltd* [1960] Ch 378 at 391-392, 395, [1960] 1 All ER 152 at 153-154, 158.

10 *Marsh's Case* (1871) LR 13 Eq 388 at 391; *Re City of London Insurance Co Ltd* [1932] 1 Ch 226.

11 *Re City of London Insurance Co Ltd* [1932] 1 Ch 226.

12 See para 719 note 1 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

705 Past members' liability to contribute; in general

NOTES 3, 4--Insolvency Act 1986 s 74(2)(c) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/A. WHO ARE CONTRIBUTORIES/706. Past members' liability to contribute where company has been re-registered.

706. Past members' liability to contribute where company has been re-registered.

In the case of a company being wound up which was at some former time registered as limited but has re-registered as unlimited¹, a person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it, is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been so re-registered².

In the case of a company being wound up which was at some former time registered as unlimited but has re-registered as a public company³ or as a limited company⁴:

1123 (1) a past member of the company who was a member of it at the time of re-registration is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time, if the winding up commences within the period of three years beginning with the day on which the company was re-registered⁵; and

1124 (2) if no persons who were members of the company at the time of re-registration are existing members of it, a person who at that time was a present or past member is liable to contribute in respect of the company's debts and liabilities contracted before that time, notwithstanding that the existing members have satisfied the contributions required to be made by them⁶.

There is no limit on the amount which a person who, at the time of re-registration, was a past or present member is liable so to contribute⁷.

¹ ie in pursuance of the Companies Act 1985 s 49 (as amended) or the former corresponding provision ie the Companies Act 1967 s 43 (repealed).

² Insolvency Act 1986 s 78(1), (2). Sections 77, 78 do not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

³ ie under the Companies Act 1985 s 43 (as amended) or the corresponding former provision (ie the Companies Act 1980 s 5 (repealed)). See also COMPANIES vol 14 (2009) PARAS 168 et seq, 178; Insolvency Act 1986 s 77(1)(a). See note 2 supra.

⁴ ie under the Companies Act 1985 s 51 or the corresponding former provision (ie the Companies Act 1967 s 44 (repealed)) Insolvency Act 1986 s 77(1)(b). See note 2 supra. See also COMPANIES vol 14 (2009) PARA 178.

⁵ Ibid s 77(2). See note 2 supra. The member is so liable notwithstanding s 74(2)(a) (see para 705 ante): s 77(2).

⁶ Ibid s 77(3). See note 2 supra. This liability is subject to s 77(2) (see the text and note 5 supra) and to s 74(2)(a), but exists notwithstanding s 74(2)(c) (see para 705 ante): s 77(3).

⁷ Ibid s 77(4). See note 2 supra. The member is liable notwithstanding s 74(2)(d), (3) (see para 715 post): s 77(4).

UPDATE

438-938 Winding Up by the Court

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706 Past members' liability to contribute where company has been re-registered

NOTE 2--Insolvency Act 1986 s 78(1) amended: SI 2009/1941.

NOTES 3, 4--Insolvency Act 1986 s 77(1) amended: SI 2009/1941.

NOTE 6--Insolvency Act 1986 s 77(3) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/A. WHO ARE CONTRIBUTORIES/707. Minor's liability to contribute.

707. Minor's liability to contribute.

If a company is wound up during the minority¹ of a shareholder, the transfer of the shares to him may be treated as a nullity, either by the minor himself² or by the liquidator³. The mere placing of the minor's name on the list of contributories does not itself require him to make an immediate claim to be removed from it⁴.

1 As to the attainment of majority at the age of 18 see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 1.

2 *Baker's Case* (1871) 7 Ch App 115.

3 *Curtis' Case* (1868) LR 6 Eq 455; *Castello's Case* (1869) LR 8 Eq 504; *Symon's Case* (1870) 5 Ch App 298. As to the right of a minor to present a winding-up petition as a contributory see *Dennison v Jeffs* [1896] 1 Ch 611 at 617; and see para 450 ante. As to the right of a minor to repudiate his membership of the company see COMPANIES vol 14 (2009) PARA 330. As to rectification of the register see para 730 post.

4 *Re Alexandra Park Co, Hart's Case* (1868) LR 6 Eq 512.

UPDATE

438-938 Winding Up by the Court

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708. Married woman's liability to contribute.

The liability of a married woman who is placed on the list of contributories as a holder of shares is in general the same as that of any other contributory¹.

¹ See the Law Reform (Married Women and Tortfeasors) Act 1935 s 1 (which provides that the contractual liability of a married woman is the same as that of a single woman); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 204. As to the abolition of restraints on anticipation see the Married Women (Restraint upon Anticipation) Act 1949. The liability of a contributory creates a debt accruing due from him at the time when his liability commenced (see the Insolvency Act 1986 s 80; and para 718 post); this is the date when the contributory entered into the contract under which he became a member (*Re Vaughan, ex p Canwell* (1864) 4 De GJ & Sm 539; *Williams v Harding* (1866) LR 1 HL 9). Hence a married woman who on 1 August 1935 held partly paid shares may still be made liable as a contributory in respect of them only to the extent of her property, and her liability cannot be enforced in bankruptcy: see the Law Reform (Married Women and Tortfeasors) Act 1935 s 4(1)(c). For instances of the liability of a married woman, before the passing of that Act, to the extent of her separate property, see *Belcher's Case* [1883] WN 94; *Re Leeds Banking Co, Matthewman's Case* (1866) LR 3 Eq 781.

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438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/A. WHO ARE CONTRIBUTORIES/709. Bankrupt's liability to contribute.

709. Bankrupt's liability to contribute.

If a contributory¹ becomes bankrupt, either before or after he has been placed on the list of contributories, his trustee in bankruptcy represents him for all the purposes of the winding up, and is a contributory accordingly². The trustee may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets³. The estimated value of the bankrupt's liability to future calls as well as calls already made may be proved against his estate⁴. If he becomes bankrupt after he has been placed on the list, his name remains on it, but he is represented by his trustee⁵.

If, however, the appointment of the trustee in bankruptcy takes place before the winding up commences, the bankrupt may not be placed on the list, nor may his trustee if he has disclaimed⁶ the shares⁷. Disclaimer determines all the bankrupt's rights and liabilities in respect of the shares, and thus operates in effect as a forfeiture; it discharges the trustee from personal liability as from the commencement of his trusteeship, but does not, except so far as is necessary for releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person⁸. If the shares are disclaimed, the liquidator may prove in the bankruptcy not only for all calls made before the disclaimer, but also for the damages caused by the disclaimer. Where it is probable that the whole amount unpaid on the disclaimed shares will have to be called up to liquidate the company's liabilities, and the shares are of no value, the measure of damages is the amount unpaid on the shares, and a proof may be brought in for that amount⁹.

Where a contributory who is also a creditor of the company becomes bankrupt after the commencement of the winding up, the debt due to him from the company must, under bankruptcy law¹⁰, be set off against calls, whichever way the balance may be, and whether the claim is made in the bankruptcy or in the winding up¹¹. If the debt due to the bankrupt from the company has been assigned either before the bankruptcy¹², or after the bankruptcy otherwise than for value¹³, the assignee stands in the same position as regards set-off as the bankrupt's estate would have done.

1 For the meaning of 'contributory' see para 703 ante.

2 Insolvency Act 1986 s 82(1), (2). The trustee in bankruptcy may remain as a contributory even when the bankrupt has been discharged: *Re Wolverhampton Steel and Iron Co Ltd* [1977] 3 All ER 467, [1977] 1 WLR 860, CA.

3 Insolvency Act 1986 s 82(3).

4 Ibid s 82(4). Proofs in respect of future calls and the receipt of a dividend on them out of the bankrupt's estate do not render the shares fully paid: see para 835 post.

5 *Re Cape Breton Co* (1881) 19 ChD 77, CA; *McEwen's Case* (1871) 6 Ch App 582 (past member). As to the right of a company to prove where a member becomes bankrupt before winding up see COMPANIES vol 15 (2009) PARA 1144.

6 Ie under the power conferred by the Insolvency Act 1986 s 315 (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 472 et seq.

7 *Re West of England Bank, ex p Budden and Roberts* (1879) 12 ChD 288.

8 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 474.

9 *Re Hallett, ex p National Insurance Co* (1894) 71 LT 408. As to proof for damages on disclaimer by a trustee in bankruptcy of shares or a contract to take up shares generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 518.

10 As to bankruptcy law relating to set-off see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 547 et seq.

11 See the Insolvency Act 1986 s 167, Sch 4 para 8 (by which the liquidator may prove for 'any balance' in the bankruptcy of a contributory); and para 577 ante. See also *Re Duckworth* (1867) 2 Ch App 578; *Re Universal Banking Corpn, ex p Strang* (1870) 5 Ch App 492. Apart from bankruptcy a contributory cannot set off a debt due to him against calls: see para 738 post.

12 *Re Universal Banking Corpn, ex p Strang* (1870) 5 Ch App 492.

13 *Re Anglo-Greek Steam Navigation and Trading Co, Carralli and Haggard's Claim* (1869) 4 Ch App 174. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 552. As to the position, apart from bankruptcy, of an assignee from a contributory see para 737 post.

UPDATE

438-938 Winding Up by the Court

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710. Death of a contributory.

If a contributory¹ dies, either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the company's assets in discharge of his liability, and are contributories accordingly². A deceased member or his estate remains a member for the purposes of the articles of association so long as his name remains on the register without notice to the company of his death³. If shares are registered in joint names, and one of the shareholders dies before winding up, his estate is not liable⁴.

1 For the meaning of 'contributory' see para 703 ante.

2 Insolvency Act 1986 s 81(1). Section 81(1) begins to operate only if and when a winding up supervenes: see *Re HL Bolton Engineering Co Ltd* [1956] Ch 577 at 582, [1956] 1 All ER 799 at 801; *Re Bayswater Trading Co Ltd* [1970] 1 All ER 608 at 610, [1970] 1 WLR 343 at 346. As to transmission of shares on death see COMPANIES vol 14 (2009) PARA 434.

3 *New Zealand Gold Extraction Co (Newbery-Vautin Process) v Peacock* [1894] 1 QB 622 at 632, CA. See also COMPANIES vol 15 (2009) PARA 1145. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq. As to the register of members see COMPANIES vol 14 (2009) PARA 335.

4 *Re Maria Anna and Steinbank Coal and Coke Co, Maxwell's Case, Hill's Case* (1875) LR 20 Eq 585 at 595.

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711. Personal representatives' liability to contribute.

Personal representatives are not personally liable in respect of shares belonging to a deceased member unless they are registered¹ with their consent as holders of the shares. In that case they are so liable and may be placed on the list in their own right even though described as executors in the register², and the same principle applies in the case of any further shares to which the estate is entitled which they accept³. A notification by a person that he is an executor does not authorise the placing of his name on the register so as to make him personally liable⁴, nor does the receipt of dividends by him of itself amount to a personal acceptance of the shares⁵.

The liability of personal representatives placed on the list in their representative capacity is limited to the assets in their hands properly administered⁶.

If they make default in paying any money ordered to be paid by them in their representative capacity, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment out of it of the money due⁷.

If, without availing themselves of the protection by means of advertisements afforded by statute⁸, the personal representatives pay a legacy without providing for the contingent liability on shares retained by them, they are personally liable in respect of the shares to an amount not exceeding the legacy⁹. As against the legatee, however, they may claim repayment of the legacy, or so much of it as is necessary to meet the liquidator's claims, even if at the time of payment they had notice of the contingent liability¹⁰, but not if it had then become an ascertained liability¹¹. The fact that the personal representatives are protected by statute does not prevent the liquidator from compelling the legatee to refund the legacy¹².

1 As to registration see COMPANIES vol 14 (2009) PARA 434.

2 *Duff's Executors' Case* (1886) 32 ChD 301, CA.

3 *Re Leeds Banking Co, Fearnside and Dean's Case, Dobson's Case* (1866) 1 Ch App 231.

4 *Buchan's Case* (1879) 4 App Cas 549 at 583, HL.

5 See *Re St George's Steam Packet Co, ex p Doyle* (1850) 2 H & Tw 221; *Re St George's Steam Packet Co, Hamer's Devisees' Case* (1852) 2 De GM & G 366; *Re Herefordshire Banking Co, Bulmer's Case* (1864) 33 Beav 435; *Buchan's Case* (1879) 4 App Cas 549 at 583, HL.

6 *Baird's Case* (1870) 5 Ch App 725; *Re Northern Coal Mining Co, ex p Blakeley's Executors* (1852) 3 Mac & G 726; *Re North of England Joint Stock Banking Co, ex p Gouthwaite* (1851) 3 Mac & G 187; *Re Vale of Neath and South Wales Brewery Co, Keene's Executors' Case* (1853) 3 De GM & G 272; *Heward v Wheatley* (1853) 3 De GM & G 628; and see *Re Herefordshire Banking Co, Bulmer's Case* (1864) 33 Beav 435; *Re Leeds Banking Co, Fearnside and Dean's Case, Dobson's Case* (1866) 1 Ch App 231; *Buchan's Case* (1879) 4 App Cas 549 at 583, HL. As to persons whose names are placed on the list in a representative capacity see para 720 post.

7 Insolvency Act 1986 s 81(3); *Price v Mayo* (1874) 43 LJ Ch 402. A balance order (see para 736 post) obtained against the representatives of a deceased contributory does not prejudice the priorities usually prevailing in the administration of estates: see *Re Hubback, International Marine Hydropathic Co v Hawes* (1885) 29 ChD 934, CA. In the administration of the estate of a deceased insolvent contributory, the estimated value of his liability to future calls, as well as the amount of calls already made, may be proved for: *Re*

McMahon, Fuller v McMahon [1900] 1 Ch 173; *Re Muggeridge, Muggeridge v Sharp, ex p Bank of London and National Provincial Insurance Association* (1870) LR 10 Eq 443. See further EXECUTORS AND ADMINISTRATORS.

8 See the Trustee Act 1925 s 27 (as amended); and TRUSTS vol 48 (2007 Reissue) para 915. Where an executor knows that the deceased possessed shares in respect of which there is a liability, an advertisement pursuant to this provision is no protection: *Re Land Credit Co of Ireland, Markwell's Case* (1872) 21 WR 135; and see *Re Family Endowment Life Assurance and Annuity Society, Cole's Executors' Case* (1871) 15 Sol Jo 711; *Re Medical, Invalid and General Life Assurance Society, Russell's Executors' Case* (1871) 15 Sol Jo 790.

9 *Taylor v Taylor* (1870) LR 10 Eq 477.

10 *Jervis v Wolferstan* (1874) LR 18 Eq 18.

11 *Whittaker v Kershaw* (1890) 45 ChD 320, CA.

12 See the Trustee Act 1925 s 27(2)(a); and TRUSTS vol 48 (2007 Reissue) para 915.

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438-938 Winding Up by the Court

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712. Trustees' liability to contribute.

Persons whose names are entered on the register as holders of shares as trustees are contributories in their own right, and their liability is not limited to the amount of the trust estate¹.

¹ *Muir v City of Glasgow Bank* (1879) 4 App Cas 337, HL; *Re City of Glasgow Bank, Bell's Case* (1879) 4 App Cas 547 at 550, HL; *Cunninghame v City of Glasgow Bank* (1879) 4 App Cas 607, HL; *Gillespie v City of Glasgow Bank* (1879) 4 App Cas 632, HL; *Cree v Somervail* (1879) 4 App Cas 648, HL; *Ker's Case* (1879) 4 App Cas 549 at 598, HL.

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713. Liability of past directors and shareholders to contribute.

Where a company is being wound up and it has made a payment out of capital in respect of the redemption or purchase of any of its own shares¹ ('the relevant payment') and the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets, apart from these provisions, are not sufficient for payment of its debts and liabilities and the expenses of the winding up, and if the winding up commenced² within one year of the date on which the relevant payment was made, then:

- 1125 (1) the person from whom the shares were redeemed or purchased; and
- 1126 (2) the directors who signed the statutory declaration made³ for purposes of the redemption or purchase, except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration,

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets⁴.

A person from whom any of the shares were so redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount⁵. A person who has contributed any amount to the assets in pursuance of these provisions may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable⁶.

1 Ie under the Companies Act 1985 Pt V Ch VII (ss 159-181) (as amended) (redeemable shares; purchase by a company of its own shares). See also COMPANIES vol 15 (2009) PARA 1229 et seq.

2 As to the commencement of the winding up see para 489 ante.

3 Ie in accordance with the Companies Act 1985 s 173(3).

4 Insolvency Act 1986 s 76(1), (2). Section 76 does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

5 Insolvency Act 1986 s 76(3). See note 4 supra.

6 Ibid s 76(4). See note 4 supra. Section 74 (see para 704 et seq ante) and s 75 (see para 717 post) do not apply in relation to liability accruing by virtue of s 76: s 76(5). Section 76 is deemed to be included in the Companies Act 1985 Pt V Ch VII (ss 159-181) (as amended) for the purposes of the Secretary of State's power to make regulations under s 179: Insolvency Act 1986 s 76(6). As to the Secretary of State see para 11 note 10 ante. See also COMPANIES vol 15 (2009) PARA 1243.

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713 Liability of past directors and shareholders to contribute

NOTES 1-4--Insolvency Act 1986 s 76(1), (2) amended: SI 2009/1941.

NOTE 6--Insolvency Act 1986 s 76(5) amended, s 76(6) omitted: SI 2009/1941.

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714. Liability of contributories of companies not formed under the Companies Act 1985 but authorised to register.

In the event of a company being wound up which has been registered¹ but not formed under the Companies Act 1985², every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable:

- 1127 (1) to pay, or contribute to the payment of, any debt or liability so contracted³;
- 1128 (2) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability⁴;
- or
- 1129 (3) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to the debts or liabilities mentioned above⁵.

Every such contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability⁶.

¹ le under the Companies Act 1985 s 680 (as amended), or previous corresponding provisions in the Companies Act 1948 or earlier Acts: see COMPANIES vol 14 (2009) PARAS 33-34.

² Insolvency Act 1986 s 83(1). Section 83 does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

³ Insolvency Act 1986 s 83(2)(a). See note 2 supra.

⁴ Ibid s 83(2)(b). See note 2 supra.

⁵ Ibid s 83(2)(c). See note 2 supra.

⁶ Ibid s 83(3). See note 2 supra. In the event of the death, bankruptcy or insolvency of any such contributory, provisions of the Insolvency Act 1986 with respect to the personal representatives of deceased contributories (see para 2471 ante) and to the trustees of bankrupt or insolvent contributories respectively (see para 709 ante) apply: s 83(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

714 Liability of contributories of companies not formed under the Companies Act 1985 but authorised to register

TEXT AND NOTES 1, 2--Insolvency Act 1986 s 83(1) (see COMPANIES vol 14 (2009) PARA 47)
amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/B. CONTRIBUTORIES' LIABILITY IN GENERAL/715. Liability in case of limited company.

B. CONTRIBUTORIES' LIABILITY IN GENERAL

715. Liability in case of limited company.

In the case of a company limited by shares, the liability of a member to pay the amount for the time being remaining unpaid on his shares, when properly called up, may be terminated only by payment in full¹. Thus persons to whom shares have been illegally allotted at a discount² may be called upon in a winding up to pay in cash for their shares, not only to meet the claims of outside creditors, but also to adjust the rights of the contributories among themselves³.

In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up⁴. If, however, the company limited by guarantee has a share capital, every member of it is liable, in addition to the amount undertaken to be contributed to the assets, to contribute to the extent of any sums unpaid on any shares held by him⁵.

The members may, by agreement among themselves, undertake an independent or collateral liability more extensive than the statutory liability⁶. Such a liability cannot be enforced against them as contributories in the winding up⁷, but may be enforced by bringing a claim⁸.

1 See the Insolvency Act 1986 s 74(2)(d); and para 704 ante. As to the invalidity of alterations to the memorandum or articles for increasing the liability of members see *Ooregum Gold Mining Co of India v Roper* [1892] AC 125 at 145, HL; and COMPANIES vol 14 (2009) PARA 367. As to the application of the Insolvency Act 1986 s 74 in connection with the winding up of limited liability partnerships see para 704 note 1 ante.

2 As to the illegal allotment of shares at a discount see COMPANIES vol 15 (2009) PARA 1111.

3 *Welton v Saffery* [1897] AC 299, HL; and see *Re Weymouth and Channel Islands Steam Packet Co* [1891] 1 Ch 66, CA.

4 Insolvency Act 1986 s 74(3); and see *Re Premier Underwriting Association Ltd (No 2)*, *Cory's Case* [1913] 2 Ch 81. 'Member' includes a past member: see para 719 note 1 post.

5 Insolvency Act 1986 s 74(3). See note 1 supra.

6 *McKewan's Case* (1877) 6 ChD 447, CA; *Re Maria Anna and Steinbank Coal and Coke Co*, *Maxwell's Case*, *Hill's Case* (1875) LR 20 Eq 585 at 588 (cases under the Joint Stock Companies Act 1856 (repealed), in which the extended liability imposed by the articles was enforced in the winding up); cf *Lion Mutual Marine Insurance Association Ltd v Tucker* (1883) 12 QBD 176, CA. Such liability will not follow merely because the company is authorised to trade in a foreign country by whose laws a member is liable for the proportion of the corporate debts corresponding to the proportion which his shares bear to the subscribed capital, even though the debt in respect of which it is sought to sue the member may have been contracted in that country: *Risdon Iron and Locomotive Works v Furness* [1906] 1 KB 49, CA. As to unpaid calls on forfeited shares see paras 704-705 ante.

7 See *Baird's Case* [1899] 2 Ch 593 at 598; *Re Marlborough Club Co* (1868) LR 5 Eq 365.

8 *Lion Mutual Marine Insurance Association Ltd v Tucker* (1883) 12 QBD 176, CA; *Peninsular Co Ltd v Fleming* (1872) 27 LT 93; cf *South African Territories v Wallington* [1898] AC 309, HL; and see *Indemnity Fire Office Ltd v Cousins* [1882] WN 16.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/B. CONTRIBUTORIES' LIABILITY IN GENERAL/716. Contracts limiting liability of members under them.

716. Contracts limiting liability of members under them.

Nothing in the Companies Act 1985 or the Insolvency Act 1986 invalidates any provision contained in an insurance policy or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract¹.

¹ Insolvency Act 1986 s 74(2)(e). For an example of such a limitation see *Re Great Britain Mutual Life Assurance Society* (1880) 16 ChD 246, CA. Where a company has issued such policies or made such contracts, there are two sets of creditors: (1) those who may be paid out of the restricted fund; and (2) those who, being ordinary creditors, may be paid out of all the assets of the company. As to forms of order relating to the appropriation of the expenses of getting in the assets and the distribution of the assets themselves in such cases see *Lethbridge v Adams, ex p International Life Assurance Society (Liquidator)* (1872) LR 13 Eq 547; *Re Agriculturist Cattle Insurance Co, ex p Official Manager* (1874) 10 Ch App 1; *Re International Life Assurance Society* (1876) 2 ChD 476, CA; *Re Accidental Death Insurance Co* (1878) 7 ChD 568. 'Member' includes a past member: see para 719 note 1 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

716 Contracts limiting liability of members under them

TEXT AND NOTE 1--Insolvency Act 1986 s 74(2)(e) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/B. CONTRIBUTORIES' LIABILITY IN GENERAL/717. Directors' unlimited liability.

717. Directors' unlimited liability.

In the winding up of a limited company, any director or manager, whether past or present, whose statutory liability is unlimited¹ is, in addition to his liability, if any, to contribute as an ordinary member, liable to make a further contribution as if at the commencement of the winding up he were a member of an unlimited company². A past director or manager is not, however, liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up³, or in respect of any debt or liability of the company contracted after he ceased to hold office⁴. Subject to the company's articles of association, a director or manager is not liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the company's debts and liabilities and the expenses of the winding up⁵.

¹ ie whose liability under the Companies Act 1985 is unlimited.

² Insolvency Act 1986 s 75(1). As to the court's fixing with unlimited or part liability a person knowingly a party to fraudulent or wrongful trading see paras 911, 914 post; as to the court's allowing set-off see para 738 post; and as to the liability of past directors where a company has made a payment out of capital in respect of the redemption and purchase of any of its own shares and there is an insufficiency of assets for payment of the company's debts and liabilities and the expenses of winding up see para 713 ante.

Section 75 does not apply in relation to the winding up of a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

³ Insolvency Act 1986 s 75(2)(a). See note 2 supra.

⁴ Ibid s 75(2)(b). See note 2 supra.

⁵ Ibid s 75(2)(c). See note 2 supra. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

717 Directors' unlimited liability

TEXT AND NOTES--Insolvency Act 1986 s 75 omitted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/B. CONTRIBUTORIES' LIABILITY IN GENERAL/718. Nature of contributory's liability.

718. Nature of contributory's liability.

The liability of a contributory creates a debt in the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability¹.

¹ Insolvency Act 1986 s 80. As to the effect of this provision on the liability of married women as contributories see para 708 ante. The liability to contribute in a winding up is, as in the case of a call made while the company is a going concern, a debt in the nature of a specialty, and binds persons liable to be placed on the list of contributories equally with persons registered as members: *Buck v Robson* (1870) LR 10 Eq 629. See also *Re Vaughan, ex p Canwell* (1864) 4 De GJ & Sm 539; *Williams v Harding* (1866) LR 1 HL 9 at 29; *Re Pickering, ex p Pickering* (1868) 4 Ch App 58 at 61; *Re West of England Bank, ex p Hatcher* (1879) 12 ChD 284 at 287; *Re Apex Film Distributors Ltd* [1960] Ch 378, [1960] 1 All ER 152, CA; cf *Christie v Taunton, Delmard, Lane & Co, Re Taunton, Delmard, Lane & Co* [1893] 2 Ch 175 at 185; *Grissell's Case* (1866) 1 Ch App 528 at 535. Before the liquidation, the liability of shareholders to future calls did not, on the wording of the corresponding provision of the Companies Act 1862 s 75 (repealed), become a debt as between executor and legatee until a call was made: *Whittaker v Kershaw* (1890) 45 ChD 320 at 326, CA. A claim upon a specialty may not be brought after the expiration of 12 years from the date when the cause of action accrued: see the Limitation Act 1980 s 8(1); and LIMITATION PERIODS vol 68 (2008) PARA 975.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

718 Nature of contributory's liability

TEXT AND NOTE 1--Insolvency Act 1986 s 80 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/B. CONTRIBUTORIES' LIABILITY IN GENERAL/719. Sums due to a member as such.

719. Sums due to a member as such.

A sum due to any member¹ of the company in his character of a member² by way of dividends³, profits or otherwise⁴ is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves⁵. Sums due to a director in respect of remuneration under the articles are not sums due to him in his character of a member⁶. Sums due as damages for misrepresentation inducing a purchase of shares are not due in the character of a member⁷.

1 'Member' includes a fully paid up member and a past member: *Re Consolidated Gold Fields of New Zealand Ltd* [1953] Ch 689, [1953] 1 All ER 791, applying dicta in *Re Anglesea Colliery Co* (1866) 1 Ch App 555 at 560. A 'sum due' includes a claim for unliquidated damages in tort: *Soden v British and Commonwealth Holdings plc (in administration)* [1996] 3 All ER 951, [1996] 2 BCLC 207, CA.

2 A person claiming damages for an irregular forfeiture of his shares does not claim in the character of a member: *Re New Chile Gold Mining Co* (1890) 45 ChD 598.

3 See *Arizona Copper Co Ltd, Petitioners* 1926 SC 315, Ct of Sess; *Re LB Holliday & Co Ltd* [1986] 2 All ER 367.

4 See *Soden v British and Commonwealth Holdings plc (in administration)* [1996] 3 All ER 951, [1996] 2 BCLC 207, CA.

5 Insolvency Act 1986 s 74(2)(f). See also para 831 post.

6 See para 579 ante; *Soden v British and Commonwealth Holdings plc (in administration)* [1996] 3 All ER 951, [1996] 2 BCLC 207, CA.

7 *Soden v British and Commonwealth Holdings plc (in administration)* [1998] AC 298, [1997] 4 All ER 353, HL.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/C. SETTLEMENT OF LIST OF CONTRIBUTORIES/720. Court's power to settle list of contributories.

C. SETTLEMENT OF LIST OF CONTRIBUTORIES

720. Court's power to settle list of contributories.

As soon as may be after making a winding-up order the court must settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of the Companies Act 1985 or the Insolvency Act 1986¹; but, if it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, it may dispense with the settlement of such a list². In settling the list, the court must distinguish between the persons who are contributories in their own right and persons who are contributories as being representatives of, or liable for the debts of, others³.

1 Insolvency Act 1986 s 148(1). As to placing holders of fully paid shares on the list see para 704 ante. There is no power to rectify the register of members under s 148(1) in the case of a winding up in relation to a limited liability partnership: see s 148(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Insolvency Act 1986 s 148(2). As to the exercise of the court's discretion see *Re Phoenix Oil and Transport Co Ltd* [1958] Ch 560 at 565, [1957] 3 All ER 218 at 221 per Roxburgh J (discretion exercised); *Re Paragon Holdings Ltd* [1961] Ch 346, [1961] 2 All ER 41 (no dispensation granted).

3 Insolvency Act 1986 s 148(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

720 Court's power to settle list of contributories

TEXT AND NOTE 1--Insolvency Act 1986 s 148(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/C. SETTLEMENT OF LIST OF CONTRIBUTORIES/721. Liquidator's duty to settle list of contributories.

721. Liquidator's duty to settle list of contributories.

The duty of settling the list of contributories has been delegated to the liquidator¹; but the liquidator may not rectify the register of members without the special leave of the court².

The liquidator must, as soon as may be after his appointment, exercise the court's power to settle a list of the company's contributories³ and, with the court's approval, rectify the register of members⁴. This duty of the liquidator is performed by him as an officer of the court subject to the court's control⁵.

The list must identify the several classes of the company's shares, if more than one, and the several classes of contributories, distinguishing between those who are contributories in their own right and those who are so as representatives of, or liable for the debts of, others⁶. In the case of each contributory, the list must contain a statement of his address, the number and class of shares, or the extent of any other interest to be attributed to him, and, if the shares are not fully paid up, the amounts which have been called up and paid in respect of them, and the equivalent, if any, where his interest is other than shares⁷. If the liquidator has already commenced a claim for calls, this does not preclude him from discontinuing and settling the defendant on the list; but the defendant's taxed costs of the claim will be deducted from the amount recovered⁸.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.195. As to the settlement of the list of contributories generally see rr 4.196-4.201; the text and notes 2-8 infra; and para 723 et seq post. As to the power to delegate see the Insolventcy Act 1986 s 160(1)(b); and para 588 ante.

2 See *ibid* s 160(2); and para 588 ante.

3 *Ie* for the purposes of *ibid* s 148: see para 720 ante.

4 Insolventcy Rules 1986, SI 1986/1925, r 4.196(1). The liquidator's duty is subject to the court's power to dispense with the settlement of the list: see the Insolventcy Act 1986 s 148(2); and para 720 ante.

5 Insolventcy Rules 1986, SI 1986/1925, r 4.196(2).

6 *Ibid* r 4.197(1). The persons whose names are placed on the list in a representative capacity are the personal representatives or trustees in bankruptcy of persons who, when the winding up commenced, were registered members, but who, either before or after the commencement, have died or become bankrupt. In the absence of any provision in the articles as to the liability of joint holders of shares, the survivor at the commencement of the winding up is alone liable as a contributory, and the personal representatives of a deceased joint holder cannot be placed on the list: *Re Maria Anna and Steinbank Coal and Coke Co, Maxwell's Case, Hill's Case* (1875) 66 LJ Ch 675 at 681, CA. Where executors of a deceased shareholder had inquired into his liability and were informed that it was in respect of a limited number of shares, it was held that after the lapse of eight years they could not be placed on the list of contributories in respect of additional shares which the deceased had agreed to take: *Meux's Executors' Case* (1852) 2 De GM & G 522.

7 Insolventcy Rules 1986, SI 1986/1925, r 4.197(2).

8 *Re United Service Association* [1901] 1 Ch 97.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/C. SETTLEMENT OF LIST OF CONTRIBUTORIES/722. 'A' and 'B' lists of contributories.

722. 'A' and 'B' lists of contributories.

In many cases there is not only a list of present members ('the 'A' list'), but also a list of past members, who have ceased to be members within a year of the beginning of the winding up ('the 'B' list'). The liquidator may settle the 'A' list without application to the court. Before settling the 'B' list he must, however, apply to the court for directions, and the court, before directing the settlement of the 'B' list, must be satisfied that the present members will probably be unable to meet their obligations¹. When a duly executed transfer has been lodged shortly before the winding up and not registered, then, unless the company was in default in failing to register the transfer before the winding up, the transferor's name must be put on the 'A' list².

¹ *Wright's Case* (1868) LR 12 Eq 335n at 345n; *Needham's Case* (1867) LR 4 Eq 135; *Andrew's Case* (1867) 3 Ch App 161; cf *Herbert v Banner, Re Barned's Bank* (1871) LR 5 HL 28. As to the liabilities of past members see para 705 et seq ante.

² *Re North of England Banking Co, Chartres' Case* (1849) 1 De G & Sm 581. As to rectifying the register in such a case see paras 728-730 post.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/C. SETTLEMENT OF LIST OF CONTRIBUTORIES/723. Procedure for settling list.

723. Procedure for settling list.

Having settled the list of contributories, the liquidator must forthwith give notice, to every person included in the list, that he has done so¹. The notice given to each person must state:

- 1130 (1) in what character, and for what number of shares or what interest, he is included in the list²;
- 1131 (2) what amounts have been called up and paid up in respect of the shares or interest³; and
- 1132 (3) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called⁴.

The notice must inform any person to whom it is given that, if he objects to any entry in, or omission from, the list, he should so inform the liquidator in writing within 21 days from the date of the notice⁵.

On receipt of any such objection, the liquidator must within 14 days give notice to the objector either that he has amended the list, specifying the amendment, or that he considers the objection to be not well-founded and declines to amend the list; and the notice must in either case inform the objector of his right⁶ to apply to the court for variation of the list⁷.

1 Insolvent Rules 1986, SI 1986/1925, r 4.198(1). As to the giving of notice see para 1088 post. The notice may be served out of the jurisdiction: *Re Nathan Newman & Co* (1887) 35 ChD 1, CA; cf *Re Baron Liebig's Cocoa and Chocolate Works Ltd* (1888) 59 LT 315.

2 Insolvent Rules 1986, SI 1986/1925, r 4.198(2)(a).

3 Ibid r 4.198(2)(b).

4 Ibid r 4.198(2)(c).

5 Ibid r 4.198(3).

6 As to the right of an objector to apply to the court for variation of the list see ibid r 4.199; and para 724 post.

7 Ibid r 4.198(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/C. SETTLEMENT OF LIST OF CONTRIBUTORIES/724. Application to court for variation of the list.

724. Application to court for variation of the list.

If a person objects to any entry in, or exclusion from, the list of contributories as settled by the liquidator and, notwithstanding notice by the liquidator declining to amend the list, maintains his objection, he may apply to the court for an order removing the entry to which he objects or, as the case may be, otherwise amending the list¹. The application must be made within 21 days of the service on the applicant of the liquidator's notice² that he has amended or declined to amend the list³. Where a person has successfully applied for the removal of his name from the list in one capacity, the liquidator cannot on the same application apply for his retention in another capacity to which no reference is made in the list⁴.

The official receiver is not personally liable for any costs incurred by a person in respect of an application to set aside or vary his act or decision in settling the list of contributories, or varying or adding to the list; and the liquidator, if other than the official receiver, is not so liable unless the court makes an order to that effect⁵.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.199(1).

2 As to the liquidator's notice see para 723 ante.

3 Insolventcy Rules 1986, SI 1986/1925, r 4.199(2).

4 *Re Premier Underwriting Association Ltd (No 2)*, *Cory's Case* [1913] 2 Ch 81.

5 Insolventcy Rules 1986, SI 1986/1925, r 4.201. As to the official receiver see para 503 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/C. SETTLEMENT OF LIST OF CONTRIBUTORIES/725. Varying the list of contributories.

725. Varying the list of contributories.

Apart from the court's power to vary the list of contributories¹, the liquidator may from time to time vary or add to the list as previously settled by him, but any such variation or addition must be made in the same manner in all respects as the settlement of the original list².

¹ See para 724 ante.

² Insolvency Rules 1986, SI 1986/1925, r 4.200. When a liquidator, after hearing objections, has finally settled the list, r 4.200 does not enable him or his successor to re-open any question he has already decided, merely because the decision is thought to be wrong: *Re Westways Garage Ltd* [1942] Ch 356, [1942] 2 All ER 147. The supplemental list cannot be used to obtain balance orders against contributories for sums not due from them as such: *Re Marlborough Club Co* (1868) LR 5 Eq 365. As to balance orders see para 736 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/D. RECTIFICATION OF REGISTER OF MEMBERS AND LIST OF CONTRIBUTORIES/726. Court's power to rectify register of members and list of contributories.

D. RECTIFICATION OF REGISTER OF MEMBERS AND LIST OF CONTRIBUTORIES

726. Court's power to rectify register of members and list of contributories.

The court has power, on the settlement of the list of contributories, to rectify the register of members¹ in all cases where rectification is required in pursuance of the Companies Act 1985 or the Insolvency Act 1986². This enables the court to exercise in the winding up its general statutory power of rectification³. Rectification may be made either before or after the list of contributories has been settled in the first instance, and the court may make any consequential alterations in the list⁴.

1 As to the effect of entries in the register see COMPANIES vol 14 (2009) PARA 345.

2 Insolvency Act 1986 s 148(1). See also para 720 ante.

3 *Re Joint Stock Discount Co, Sichell's Case* (1867) 3 Ch App 119 at 122; *Re Sussex Brick Co* [1904] 1 Ch 598, CA. As to the court's general power to rectify the register see COMPANIES vol 14 (2009) PARA 351 et seq.

4 See eg *Re Onward Building Society* [1891] 2 QB 463 at 476, 481, CA. Application for alteration of the list of contributories and for rectification of the register may be made in one summons: *Re Onward Building Society* supra at 477.

UPDATE

438-938 Winding Up by the Court

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727. Liquidator's power to rectify register.

The liquidator must not make any rectification of the register of members without the special leave of the court¹. If he places on the list of contributories the name of a person who is not on the register of members, the liquidator, on an application by that person to vary the list by removing his name from it, has to satisfy the court that the circumstances are such that the applicant's name ought to have been on the register, and was improperly omitted from it².

1 Insolvency Act 1986 s 160(2).

2 *Re Macdonald, Sons & Co* [1894] 1 Ch 89, CA.

UPDATE

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728. Application for rectification of register.

An application to rectify the register of members may be made by the person aggrieved or any member of the company or by the company¹. Where the application is made by the liquidator in the winding up, it must be made in the company's name and not in his own name².

1 See the Companies Act 1985 s 359(1); and COMPANIES vol 14 (2009) PARA 351 et seq. An application under s 359 after a winding-up order has been made or a provisional liquidator has been appointed will require the leave of the court under the Insolvency Act 1986 s 130: see para 893 post. A liquidator on behalf of the company may dispute the validity of an allotment and obtain rectification of the register of members: *Re S/y, Spink & Co* [1911] 2 Ch 430.

2 *Re Bank of Hindustan, China and Japan, ex p Kintrea* (1869) 5 Ch App 95 at 102. As to the circumstances in which the court will not rectify at the instance of the liquidator see para 730 post. As to the procedure see para 726 note 4 ante; and COMPANIES vol 14 (2009) PARA 353.

UPDATE

438-938 Winding Up by the Court

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729. Principles guiding the court.

The principles upon which the court exercises the power of rectifying the register of members after the commencement of a winding up¹ are similar to those upon which it exercises the power of rectifying the register while the company is a going concern². Where, however, a person whose name is duly entered on the register as a member at the date of the commencement of the winding up seeks to have his name removed on the ground that, although he agreed to become a member, the agreement is voidable at his option, as, for example, where the contract was induced by fraud, it is necessary that he should have definitely and effectively repudiated the agreement before the winding up commenced, and followed up his repudiation by active measures to have his name removed from the register³; but, if the purported agreement was wholly void and not merely voidable, rectification may be obtained, even though no steps are taken before winding up⁴. The rectification may be made retrospectively if no injustice will thereby be done to third parties⁵.

1 As to the commencement of the winding up see para 489 ante.

2 See COMPANIES vol 14 (2009) PARA 351.

3 See COMPANIES vol 15 (2009) PARA 1074.

4 *Baillie's Case* [1898] 1 Ch 110; and see COMPANIES vol 15 (2009) PARA 1074.

5 *Re Sussex Brick Co* [1904] 1 Ch 598, CA; *Re Scottish Universal Finance Bank, Breckenridge's Case* (1865) 2 Hem & M 642; *Baillie's Case* [1898] 1 Ch 110.

UPDATE

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730. Where rectification will be ordered.

The court may rectify the register of members and, if necessary, the list of contributories, where, without sufficient cause¹, a person's name is entered in or omitted from the register or list, or if default has been made or unnecessary delay has taken place² in entering on the register the fact of any person's having ceased to be a member³. The court must inquire into the circumstances of the case and consider what equity the applicant has to call for its interposition⁴. Where a transfer has not been registered, or an informal transfer has been registered, before winding up, owing to the company's default, the court will not, at the liquidator's instance, rectify the register⁵, although it will do so on the application of the transferor or transferee by substituting the transferee's name for that of the transferor⁶. It will not, however, do so where there has been no default or unnecessary delay on the company's part⁷. Where a sale and transfer of shares are made after the winding-up order, the court will direct the registration of the transfer only if it is for the benefit of the company or of those interested in its assets⁸.

If a person's name is improperly entered or omitted, it must be considered to be entered or omitted without sufficient cause within the meaning of the enactment⁹. A person's name is deemed to be entered on the register without sufficient cause if it has been originally registered without his authority¹⁰ and he has not assented to it¹¹. Where shareholders' names have been improperly removed from the register before a winding up commenced, the court will rectify the register on the liquidator's application, by replacing their names¹².

In the absence of a clause in the articles empowering the directors to reject a transferee of whom they disapprove¹³, a transfer before the commencement of the liquidation¹⁴ is good even though it is made for the purpose of escaping liability, provided that it is an out-and-out transfer reserving to the transferor no beneficial right¹⁵. A transferor cannot, however, transfer the burden while reserving the benefit attaching to his shares¹⁶. A transfer is not necessarily invalidated by the fact that the transferor pays money to the transferee¹⁷ or covenants to indemnify him, though the existence of a covenant of indemnity may be material in determining whether the transferor has reserved the benefit¹⁸. Where the articles empower the directors to reject a transferee of whom they do not approve, the transferor cannot escape liability if he has actively by falsehood or passively by concealment induced them to pass and register a transfer which they would otherwise have refused to register¹⁹. A misdescription of the transferee does not of itself invalidate a transfer²⁰. Whether or not the articles confer on the directors a power to reject a transferee of whom they do not approve, the transferor cannot escape liability where he has obtained the opportunity of executing and registering his transfer fraudulently, for example by procuring the postponement of the commencement of the winding up, or where by collusion with the directors he has induced them to pass the transfer in breach of duty to the company²¹. Where the transfer is out-and-out, the liquidator cannot set up any right to have the transfer set aside, for example on the ground of fraudulent misrepresentation, which the transferee may have against the transferor²². Where, with intent to deceive a company, a person takes shares in the name of a fictitious person or of some other person without his authority, the liquidator may place his name on the list of contributories, and the court will rectify the register of members and, if necessary, the list of contributories²³.

- 1 For the meaning of 'without sufficient cause' see the text and notes 2-23 *infra*.
- 2 As to the circumstances in which the court will rectify on the ground of default or undue delay see the text and notes 6-8 *infra*.
- 3 See the Companies Act 1985 s 359(1); and COMPANIES vol 14 (2009) PARA 351.
- 4 See *Trevor v Whitworth* (1887) 12 App Cas 409 at 440, HL, per Lord Macnaghten; *Re Joint Stock Discount Co, Sichell's Case* (1867) 3 Ch App 119; *Bellerby v Rowland and Marwood's Steamship Co Ltd* [1902] 2 Ch 14, CA; *Re Onward Building Society* [1891] 2 QB 463, CA; *Re Hannan's King (Browning) Gold Mining Co Ltd* (1898) 14 TLR 314, CA.
- 5 *Re Joint Stock Discount Co, Sichell's Case* (1867) 3 Ch App 119; *Re General Floating Dock Co* (1867) 15 LT 526.
- 6 *Nation's Case* (1866) LR 3 Eq 77; *Fyfe's Case* (1869) 4 Ch App 768; *Hill's Case* (1867) 4 Ch App 769n; *Lowe's Case* (1870) LR 9 Eq 589; *Re Manchester and Oldham Bank* (1885) 54 LJ Ch 926.
- 7 *Shepherd's Case* (1866) 2 Ch App 16; *Re Anglo-Italian and Colonial, Industrial and Commercial Institution Ltd, Grey's Case* (1888) 5 TLR 60, CA.
- 8 *Re Onward Building Society* [1891] 2 QB 463 at 483, CA. See also para 701 *ante*.
- 9 In the Companies Act 1985 s 359(1): see *Re Bank of Hindustan, China and Japan, ex p Kintrea* (1869) 5 Ch App 95.
- 10 *Alabaster's Case* (1868) LR 7 Eq 273; *Re Empire Assurance Corpn, Challis' Case, Somerville's Case* (1871) 6 Ch App 266.
- 11 *Re Peruvian Rly Co, Crawley's Case, Robinson's Case* (1869) 4 Ch App 322; *Re Empire Assurance Corpn, Challis' Case, Somerville's Case* (1871) 6 Ch App 266. See also the cases cited in para 732 note 5 *post*.
- 12 *Duff's Executor's Case* (1866) 32 ChD 301, CA; *Re Bank of Hindustan, China and Japan, ex p Kintrea* (1869) 5 Ch App 95; *Re Companies Guardian Society, Lord Wallscourt's Case* (1899) 7 Mans 235.
- 13 As to restrictions on transfer see COMPANIES vol 14 (2009) PARA 392.
- 14 It is doubtful whether, where a transfer to escape liability has not been completed by a legal transfer before the commencement of the winding up, the court will assist the transferor: see *Read's Case* (1872) 27 LT (European Arbitration) 10; *Lloyd's Case* (1872) 27 LT (European Arbitration) 25; *Re National and Provincial Marine Insurance Co, ex p Parker* (1867) 2 Ch App 685; cf *Re Smith, Knight & Co, Weston's Case* (1868) 4 Ch App 20.
- 15 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 316-319, CA, following *Re Mexican and South American Co, De Pass' Case* (1859) 4 De G & J 544; *Re Smith, Knight & Co, Weston's Case* (1868) 4 Ch App 20 (overruling *Re Mexican and South American Mining Co, Lund's Case* (1859) 27 Beav 465, and distinguishing *Re Mexican and South American Mining Co, Costello's Case* (1860) 2 De GF & J 302 and *Re Electric Telegraph Co of Ireland, Budd's Case* (1861) 3 De GF & J 297). See also *Re Smith, Knight & Co, Hakim's Case* (1869) 7 Ch App 296n; *Re Smith, Knight & Co, Battie's Case* (1870) 39 LJ Ch 391.
- 16 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 318, CA; and see *Re Mexican and South American Co, Hyam's Case* (1859) 1 De GF & J 75; *Re Athenaeum Life Assurance Society, Chinnocks's Case* (1860) John 714; *Re Mexican and South American Co, Costello's Case* (1860) 2 De GF & J 302; *Re Esgair Mwyn Mining Co, Alexander's Case* (1861) 3 LT 883; *Re National and Provincial Marine Insurance Co, ex p Parker* (1867) 2 Ch App 685; *Re Bank of Hindustan, China and Japan, ex p Kintrea* (1869) 5 Ch App 95; *Re Imperial Mercantile Credit Association, Wilkinson's Case* [1869] WN 211.
- 17 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 320, CA; *Re Hafod Lead Mining Co, Slater's Case* (1866) 35 Beav 391.
- 18 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 319-320, CA, distinguishing *Re Phoenix Life Assurance Co, ex p Hatton* (1862) 31 LJ Ch 340.
- 19 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 321, CA (where, on the facts, rectification was refused after the transfer had been registered). For cases where a transfer was held good despite misdescription see note 20 *infra*. For cases where a transfer was held bad see *Bank of Hindustan, China and Japan, ex p Kintrea* (1869) 5 Ch App 95; *Re Electric Telegraph Co of Ireland, Budd's Case* (1861) 3 De GF & J 297, as explained in *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 321, CA, overruling *Re*

Discoverers Finance Corpn Ltd [1908] 1 Ch 141 (which was compromised on appeal [1908] 1 Ch 334, CA); *Payne's Case* (1869) LR 9 Eq 223; *Williams' Case* (1869) LR 9 Eq 225n; *Re Imperial Mercantile Credit Association, Wilkinson's Case* [1869] WN 211; *Re Bank of Hindustan, China and Japan, Snow's Case* (1871) 25 LT 406.

20 *Re Financial Insurance Co, Bishop's Case* (1869) 7 Ch App 296n; *Masters' Case* (1872) 7 Ch App 292; *William's Case* (1875) 1 ChD 576.

21 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 322, CA (rectification refused). See also *Bennett's Case* (1854) 5 De GM & G 284; *Re Mitre Assurance Co, Eyre's Case* (1862) 31 Beav 177; *Re Stranton Iron and Steel Co* (1873) LR 16 Eq 559; *Cannon v Trask* (1875) LR 20 Eq 669; *Pender v Lushington* (1877) 6 ChD 70; *Moffatt v Farquhar* (1878) 7 ChD 591; *Re South London Fish Market Co* (1888) 39 ChD 324 at 331, CA; *Re Accidental Death Assurance Co, Lankester's Case* (1870) 6 Ch App 905n, explained in *Re Accidental Death Assurance Co, Chappell's Case* (1871) 6 Ch App 902 at 910; *Re Consols Insurance Association, Benham's Case* (1865) 12 LT 224 (rectification ordered).

22 *Re Discoverers Finance Corpn Ltd, Lindlar's Case* [1910] 1 Ch 312 at 320-321, CA, overruling *Re Discoverers Finance Corpn Ltd* [1908] 1 Ch 141 (compromised on appeal [1908] 1 Ch 334, CA). In the case of voluntary winding up, if the transferee initiates proceedings, the liquidator should give his consent under the Insolvency Act 1986 s 88 (see para 998 post): see *Re Discoverers Finance Corpn Ltd, Lindlar's Case* supra.

23 *Re Hercules Insurance Co, Pugh and Sharman's Case* (1872) LR 13 Eq 566; *Richardson's Case* (1875) LR 19 Eq 588; *Re Yeoland's Consols, Manley's Case* (1890) 2 Meg 74; *Re Central Klondyke Gold Mining and Trading Co, Savigny's Case* (1898) 5 Mans 336; *King's Case* (1871) 6 Ch App 196.

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731. Persons under disability.

Rectification by substituting the name of a beneficiary for that of his registered trustee cannot be obtained¹, unless the trustee was a minor² when the winding up commenced³. A transferor will be substituted for the transferee on the liquidator's application where the transferee was a minor when the winding up commenced⁴, unless the company has been guilty of laches⁵. After the company has once obtained an adult member, a prior transfer to a minor cannot be avoided, and the transferor to the minor cannot be placed on the 'B' list⁶.

The liquidator could not, by reason of the limitation on the liability of a married woman contributory before the passing of the Law Reform (Married Women and Tortfeasors) Act 1935⁷, have the name of a husband substituted for that of a wife, even though she had no separate estate and the shares were given to her by him⁸.

1 *King's Case* (1871) 6 Ch App 196.

2 As to the attainment of majority at the age of 18 see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 1.

3 *Weston's Case* (1870) 5 Ch App 614; cf *Re National Bank of Wales Ltd, Massey and Giffin's Case* [1907] 1 Ch 582.

4 *Curtis's Case* (1868) LR 6 Eq 455; *Castello's Case* (1869) LR 8 Eq 504; *Capper's Case* (1868) 3 Ch App 458; *Re Joint Stock Discount Co, Mann's Case* (1867) 3 Ch App 459n; *Symons' Case* (1870) 5 Ch App 298; *Richardson's Case* (1875) LR 19 Eq 588; *Re European Assurance Society, Bentinck's Case* (1873) 18 Sol Jo 224.

5 *Parson's Case* (1869) LR 8 Eq 656.

6 *Gooch's Case* (1872) 8 Ch App 266.

7 As to the effect of this Act on the liability of a married woman contributory see paras 708, 718 ante.

8 *Re London, Bombay and Mediterranean Bank* (1881) 18 ChD 581.

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732. Agreements to take shares etc.

Where a person makes a binding agreement with a company to take shares but his name is not entered on the register as the holder, the register may be rectified and his name entered on the list of contributories¹. An agreement by a person to 'place' shares is not an agreement to accept an allotment, and his name cannot be entered on the register or list². Where fully paid shares have been given to a director as a bribe, he cannot be placed on the list in respect of those shares as if they were unpaid³, but he may be placed on the list in respect of shares which he agreed to take but which he purported to pay for with money obtained from the vendor to the company⁴. A shareholder's name will be taken off the register after winding up commenced where there was no contract by him to take the shares⁵.

1 *Re Oola Land and Copper Mining Co, Palmer's Case* (1868) 1R 2 Eq 573; *Re East India Cotton Agency Ltd, Sand's Case* (1875) 32 LT 299.

2 *Gorrissen's Case* (1873) 8 Ch App 507.

3 *Dent's Case, Forbes' Case* (1873) 8 Ch App 768; *Carling, Hespeler and Walsh's Cases* (1875) 1 ChD 115, CA; *De Ruvigne's Case* (1877) 5 ChD 306, CA; *Re Innes & Co Ltd* [1903] 2 Ch 254, CA; cf *Re Universal Provident Life Association, ex p Daniell* (1857) 1 De G & J 372 (commented on in *Carling, Hespeler and Walsh's Cases* supra).

4 *Hay's Case* (1875) 10 Ch App 593.

5 Eg because he has not applied for or agreed to take shares (*Hutchinson's Case* [1895] 1 Ch 226; *Re Harvey's Oyster Co, Ormerod's Case* [1894] 2 Ch 474; *Baillie's Case* [1898] 1 Ch 110); or his application for shares was withdrawn before notice of allotment was given (*Truman's Case* [1894] 3 Ch 272; *Ritso's Case* (1877) 4 ChD 774, CA; *Hebb's Case* (1867) LR 4 Eq 9); or, although application for shares was made, notice of allotment was not given (*Re Peruvian Rly Co, Crawley's Case, Robinson's Case* (1869) 4 Ch App 322; *Gunn's Case* (1867) 3 Ch App 40); or, the application for shares being conditional, the condition was not fulfilled (*Re London and Southern Counties Freehold Land Co* (1885) 31 ChD 223; *Humphrey and Denman Ltd (in Liquidation) v Kavanagh* (1925) 41 TLR 378, CA); or the application for shares was not accepted (*Beck's Case* (1874) 9 Ch App 392). A shareholder acting as a member or otherwise by word or deed precluding himself from objecting that there was not a contract binding him to take the shares is liable as a contributory: see *Peruvian Rly Co, Crawley's Case, Robinson's Case* supra; *Re Empire Assurance Corp'n, Challis's Case, Somerville's Case* (1871) 6 Ch App 266; *Re Railway Time Tables Publishing Co, ex p Sandys* (1889) 42 ChD 98, CA; *Re Barned's Banking Co, ex p Contract Corp'n* (1867) 3 Ch App 105.

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E. CALLS

733. When calls may be made.

At any time after making a winding-up order and either before or after it has ascertained whether the company's assets will be sufficient, the court may make calls on all or any of the contributories for the time being settled on the list of the contributories, to the extent of their liability, for payment of any money which it considers necessary to satisfy the company's debts and liabilities and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and may make an order for payment of any calls so made¹. In making a call, the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it².

The call may be made before or after ascertaining what claims against the company will be established as debts³, but the list of contributories must first have been settled⁴. The liquidator may be authorised to accept payment by instalments⁵. Shareholders are liable to pay calls made in the winding up even though, by the contract under which they took their shares, the calls are payable only by instalments, and the date for payments has not arrived⁶.

1 Insolvency Act 1986 s 150(1).

2 Ibid s 150(2).

3 *Re Contract Corp'n* (1866) 2 Ch App 95; *Re Barnard's Banking Co Ltd* (1867) 36 LJ Ch 215.

4 *Needham's Case* (1867) LR 4 Eq 135 at 138; *Re English Bank of the River Plate* [1892] 1 Ch 391 at 394.

5 *Re Law Guarantee Trust and Accident Society* (1910) 26 TLR 565 (where the liquidator was authorised to accept payment by smaller instalments in the case of those who produced a sufficient affidavit of means, the latter document not being placed on the file).

6 *Re Cordova Union Gold Co* [1891] 2 Ch 580; *Re Pyle Works* (1890) 44 ChD 534 at 538, CA, per Lindley LJ; *London Provident Building Society v Morgan* [1893] 2 QB 266 at 272; *Re Pinecord Ltd (in liquidation)* [1995] 2 BCLC 57, sub nom *Re Pinecord Ltd, Bennett v Rolph* [1995] BCC 483.

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734. Liquidator's power to make calls.

In a winding up by the court, the court's powers in relation to making calls are exercisable by the liquidator as an officer of the court subject to the court's control, but only with the court's leave or the liquidation committee's sanction¹, and subject to the following provisions².

Where the liquidator proposes to make a call, and there is a liquidation committee, he may summon a meeting of the committee for the purpose of obtaining its sanction³; and at least seven days' notice of the meeting must be given by the liquidator to each member of the committee⁴. The notice must contain a statement of the proposed amount of the call, and the purpose for which it is intended to be made⁵.

For the purpose of obtaining the leave of the court for the making of a call on any contributories of the company, the liquidator must apply without notice, supporting his application by affidavit⁶. There must in the application be stated the amount of the proposed call, and the contributories on whom it is to be made⁷. The court may direct that notice of the order be given to the contributories concerned, or to other contributories, or may direct that the notice be publicly advertised⁸.

¹ The court may exercise the power by way of original right: *Re North Eastern Insurance Co Ltd* (1915) 85 LJ Ch 751. As to the liquidation committee see para 629 et seq ante.

² Insolvency Act 1986 s 160(1)(d), (2); Insolvency Rules 1986, SI 1986/1925, r 4.202. See also para 588 ante. Calls in respect of uncalled capital charged by debentures may be made only in the liquidator's name: see COMPANIES vol 15 (2009) PARA 1369.

³ Ibid r 4.203(1).

⁴ Ibid r 4.203(2).

⁵ Ibid r 4.203(3).

⁶ Ibid r 4.204(1). As to the prescribed form of affidavit in support of the liquidator's application see rr 4.204, 12.7, Sch 4 Form 4.56.

⁷ Ibid r 4.204(2).

⁸ Ibid r 4.204(3). As to the prescribed form of order see Sch 4 Form 4.57.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/E. CALLS/735. Making and enforcement of the call.

735. Making and enforcement of the call.

Notice of the call must be given to each of the contributories concerned, and must specify the amount or balance due from him in respect of it, and whether the call is made with the sanction of the court or the liquidation committee¹. If the notice of call states that interest will be charged if the call is not paid at the time appointed², such interest must be paid³, but provisions in articles of association as to payment of interest on calls do not apply to calls made by a liquidator⁴.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.205(1). As to the prescribed form of notice of call sanctioned by the court or the liquidation committee see rr 4.205, 12.7, Sch 4 Form 4.58.

² The prescribed form of notice of call (see note 1 *supra*) provides that, if the sum due is not paid by the date appointed, interest will be charged upon the amount unpaid at the prevailing rate payable in respect of judgment interest from that date until payment.

³ See the Supreme Court Act 1981 s 35A (as added); and DAMAGES vol 12(1) (Reissue) para 848. See also *Re Overend, Gurney & Co, ex p Lintott* (1867) LR 4 Eq 184, reconsidered in *Re Welsh Flannel and Tweed Co* (1875) LR 20 Eq 360; *Barrow's Case* (1868) 3 Ch App 784.

⁴ *Re Welsh Flannel and Tweed Co* (1875) LR 20 Eq 360; *Re Kharaskhoma Exploring and Prospecting Syndicate* (1897) 66 LJ Ch 675 at 681, CA. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

UPDATE

438-938 Winding Up by the Court

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735 Making and enforcement of the call

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/E. CALLS/736. Balance order.

736. Balance order.

Payment of the amount due from each contributory on a call may be enforced by the court¹. The order is generally called a 'balance order'. It may be enforced in the same way as a judgment or order of the court in the exercise of its ordinary jurisdiction².

¹ Insolvency Rules 1986, SI 1986/1925, r 4.205(2). As to the prescribed form of order for payment of a call due from a contributory see r 4.205, Sch 4 Form 4.59. As to the making of applications see para 1055 et seq post.

² See the Companies Act 1985 s 728; the Insolvency Rules 1986, SI 1986/1925, r 7.19; and para 1025 post. For the purposes of the Companies Act 1985 s 728, references to that Act include references to certain provisions of the Insolvency Act 1986, and the Company Directors Disqualification Act 1986: Companies Act 1985 s 735A(1), (3) (s 735A added by the Insolvency Act 1986 s 439(1), Sch 13 Pt II; and the Companies Act 1985 s 735A(1) amended by the Companies Act 1989 s 212, Sch 24). A balance order is not a judgment; and the right of action in respect of the amount due is not merged in or destroyed by the order and may be sued upon: *Chalk, Webb & Co Ltd v Tennent* (1887) 57 LT 598; and see *Re Hubback, International Marine Hydropathic Co v Hawes* (1885) 29 ChD 934, CA. Cf the Insolvency Act 1986 s 159, which provides that any powers conferred on the court by that Act are in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums: see para 4 note 1 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/F. RIGHTS OF CONTRIBUTORIES IN REGARD TO THE DEBTS DUE FROM AND TO THE COMPANY/737. Shareholder's claim as creditor.

F. RIGHTS OF CONTRIBUTORIES IN REGARD TO THE DEBTS DUE FROM AND TO THE COMPANY

737. Shareholder's claim as creditor.

A shareholder who is liable for unpaid calls cannot receive a dividend on a debt due to him by the company¹, but, when he has paid all calls which have become due, he is entitled to a dividend on the amount of any debt owing to him from the company *pari passu* with the other creditors².

A shareholder who claims as assignee of a debt due by the company may prove for the debt in competition with other creditors even if he is still liable for unpaid calls³, and even if he has bought up the debt for less than its full amount⁴; but, if after the winding up commences⁵ he assigns a debt due to him from the company, his assignee cannot receive any dividend upon it unless and until the shareholder has paid all calls due⁶. Where the assignment is made before the winding up commenced, the assignee is entitled to any dividend on the debt that may be declared, notwithstanding the non-payment by his assignor of calls on shares due from him to the company⁷. A shareholder whose shares have been improperly forfeited and sold may prove for damages in competition with creditors⁸.

A contributory who petitions for and obtains a winding-up order is entitled to be paid the costs of his petition before paying any calls due from him to the company⁹.

1 *Grissell's Case* (1866) 1 Ch App 528 at 536. As to two companies both of which are insolvent see para 738 note 6 post.

2 *Re West of England Bank, ex p Brown* (1879) 12 ChD 823; *Grissell's Case* (1866) 1 Ch App 528.

3 *Re Railway Time Tables Publishing Co Ltd, ex p Welton* [1899] 1 Ch 108, CA.

4 *Re Humber Ironworks Co* (1869) LR 8 Eq 122.

5 As to the commencement of the winding up see para 489 ante.

6 *Re China Steamship Co, ex p Mackenzie* (1869) LR 7 Eq 240. As to the position where the contributory becomes bankrupt see para 709 ante.

7 *Christie v Taunton, Delmard, Lane & Co, Re Taunton, Delmard, Lane & Co* [1893] 2 Ch 175.

8 *Re New Chile Gold Mining Co* (1890) 45 ChD 598.

9 *Re General Exchange Bank* (1867) LR 4 Eq 138, applied in *Re Beer, Brewer, and Bowman* (1915) 113 LT 990.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/F. RIGHTS OF CONTRIBUTORIES IN REGARD TO THE DEBTS DUE FROM AND TO THE COMPANY/738. Set-off by contributory.

738. Set-off by contributory.

In a winding up a contributory cannot set off a debt owing to him by the company against a call¹, whether made before or after the winding up²; but his trustee in bankruptcy may do so³, and so may the assignee of a bankrupt contributory, even though the debt was assigned before the bankruptcy but after the winding up commenced⁴.

Where a company in liquidation is both a creditor and a shareholder of another company in liquidation, it cannot, even when insolvent, set off against calls made by the liquidator of the other company a debt owing to it by that company⁵ or take any dividend on the debt until it has paid up all calls in full⁶. A member who holds shares in trust for the company cannot set off against a call a claim to indemnity⁷. An agreement that any sum which a shareholder may be called upon to pay in respect of a guarantee by him of the company's debts must be treated at his option as a payment in advance of calls does not give him a right to set off payments made under the guarantee against calls subsequently made after the winding up has commenced⁸.

1 *Grissell's Case* (1866) 1 Ch App 528; *Gill's Case* (1879) 12 ChD 755; *Calisher's Case* (1868) LR 5 Eq 214; *Re West of England Bank, ex p Brown* (1879) 12 ChD 823; cf *Re London and Colonial Co, ex p Clark* (1869) LR 7 Eq 550; *Re United Service Association* [1901] 1 Ch 97 at 101. The rule is the same in a voluntary winding up: *Black & Co's Case* (1872) 8 Ch App 254; *Re Whitehouse & Co* (1878) 9 ChD 595, disapproving *Brighton Arcade Co v Dowling* (1868) LR 3 CP 175; and see *Hoby & Co v Birch* (1890) 59 LJQB 247. This rule applies to prevent a shareholder setting off debts as against a call made before the winding up when the call is sued for in an action at common law: *Alliance Film Corpn Ltd v Knoles* (1927) 43 TLR 678, not following *Brighton Arcade Co v Dowling* supra. As to set-off see further para 792 post.

2 *Barnett's Case* (1875) LR 19 Eq 449; *Government Security Investment Co v Dempsey* (1880) 50 LJQB 199. Where a claim for calls has been begun before winding up, and set-off has been pleaded but there has been no judgment, no set-off may be allowed against those calls after winding up: *Re Hiram Maxim Lamp Co* [1903] 1 Ch 70.

3 *Re Duckworth* (1867) 2 Ch App 578.

4 See para 709 ante.

5 *Re Auriferous Properties Ltd* [1898] 1 Ch 691.

6 *Re Auriferous Properties Ltd (No 2)* [1898] 2 Ch 428; *Re Leeds and Hanley Theatres of Varieties Ltd* [1904] 2 Ch 45; and see para 739 note 1 post. Where both companies are hopelessly insolvent and unable to pay the amount due to each other, the respective liquidators may be authorised to disown these liabilities and to pay dividends to the other creditors: see *Re National and Provincial Live Stock Insurance Co Ltd* [1917] 1 Ch 628. As to accord and satisfaction in such cases see *Re White Star Line Ltd* [1938] Ch 458, [1938] 1 All ER 607, CA.

7 *Re Munster Bank Ltd, Dillon's Claim* (1886) 17 LR Ir 341, CA.

8 *Re Law Car and General Insurance Corpn* [1912] 1 Ch 405; and see *Re Branksea Island Co Ltd, ex p Bentinck* (1888) 1 Meg 12, CA. As to the commencement of the winding up see para 489 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/F. RIGHTS OF CONTRIBUTORIES IN REGARD TO THE DEBTS DUE FROM AND TO THE COMPANY/739. Set-off or retainer against insolvent estate.

739. Set-off or retainer against insolvent estate.

The executors of an insolvent estate, part of the assets of which are the shares of a company in liquidation, are entitled to receive a share in the surplus assets of the company and, if the deceased was indebted to the company, the liquidator may not retain out of the surplus assets more than the dividend in respect of the debt or maintain a set-off¹.

¹ *Re Peruvian Rly Construction Co Ltd* [1915] 2 Ch 442, CA (where there were no mutual dealings). As to the principle laid down in *Cherry v Boulton* (1839) 4 My & Cr 442, which was considered in *Re Peruvian Rly Construction Co Ltd* supra, see further *Re Fenton (No 2), ex p Fenton Textile Association Ltd* [1932] 1 Ch 178 at 186-187; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 559. As to set-off see further para 792 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/F. RIGHTS OF CONTRIBUTORIES IN REGARD TO THE DEBTS DUE FROM AND TO THE COMPANY/740. Set-off against money due from contributory or director with unlimited liability.

740. Set-off against money due from contributory or director with unlimited liability.

In the case of an unlimited company, where a contributory is ordered¹ to pay money due from him or the estate of the person whom he represents, not being money payable by virtue of a call², the court may allow to him, by way of set-off, any money due from the company to him or the estate which he represents on any independent dealing or contract with it, but not money due to him as a member in respect of any dividend or profit³.

In the case of a limited company, the court may make a similar allowance to any director or manager whose liability is unlimited, or to his estate⁴.

Whether the company is limited or unlimited, when all the creditors have been paid in full, together with interest at the official rate⁵, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call⁶.

1 le under the Insolvency Act 1986 s 149(1): see para 741 post.

2 The right of set-off does not exist as against calls made in the winding up: *Re West of England and South Wales District Bank, ex p Branwhite* (1879) 48 LJ Ch 463, not following *Gibbs and West's Case* (1870) LR 10 Eq 312.

3 Insolvency Act 1986 s 149(2)(a). Section 149(2), and the reference in s 149(3) to the company being limited or unlimited, do not apply in the case of a winding up in relation to a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 Insolvency Act 1986 s 149(2)(b). See note 3 supra.

5 For the meaning of 'the official rate' see para 827 note 1 post.

6 Insolvency Act 1986 s 149(3). See note 3 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/G. ORDERS AGAINST CONTRIBUTORIES/741. Orders against contributories.

G. ORDERS AGAINST CONTRIBUTORIES

741. Orders against contributories.

Money payable on shares upon the terms of allotment or in respect of calls made before the winding-up order may be due when the winding up commences¹. At any time after making a winding-up order, the court may make an order against any contributory for the time being on the list of contributories² to pay, in manner directed by the order, any money due to the company from him, or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call³.

The order may be enforced in the same way as a judgment or order of the court made in the exercise of its ordinary jurisdiction⁴, but it is not a judgment, and the right of action in respect of the amount due is not merged in or destroyed by the order, and may be sued upon⁵.

The court may order any contributory from whom money is due to the company to pay the amount into the Bank of England, or any branch of it, to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator⁶.

1 As to the commencement of the winding up see para 489 ante.

2 An order may be made against a holder of fully paid-up shares who has been placed on the list of contributories and has received a share of surplus assets: *Re Aidall Ltd* [1933] Ch 323, CA.

3 Insolvency Act 1986 s 149(1). The call referred to is any call in pursuance of the Companies Act 1985 (except in the case of a winding up in relation to a limited liability partnership) or the Insolvency Act 1986: s 149(1); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3. See para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to enforcing in one part of Great Britain an order made in another part see para 1029 post; and for the meaning of 'Great Britain' see para 12 note 2 ante. As to balance orders see para 736 ante.

Upon the dissolution of the company (see para 929 et seq post), the powers conferred on the court by the Insolvency Act 1986 s 149 come to an end: *Butler v Broadhead* [1975] Ch 97, [1974] 2 All ER 401.

4 See the Companies Act 1985 s 728; the Insolvency Rules 1986, SI 1986/1925, r 7.19; and para 1025 post. For the purposes of the Companies Act 1985 s 728, references to that Act include references to certain provisions of the Insolvency Act 1986, and the Company Directors Disqualification Act 1986: Companies Act 1985 s 735A(1), (3) (s 735A added by the Insolvency Act 1986 s 439(1), Sch 13 Pt II; and the Companies Act 1985 s 735A(1) amended by the Companies Act 1989 s 212, Sch 24).

5 *Westmoreland Green and Blue Slate Co v Feilden* [1891] 3 Ch 15, CA. Cf para 736 note 2 ante.

6 See the Insolvency Act 1986 s 151(1); and para 677 ante.

UPDATE

438-938 Winding Up by the Court

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741 Orders against contributories

NOTES 2, 3--Insolvency Act 1986 s 149(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(v) Contributories/G. ORDERS AGAINST CONTRIBUTORIES/742. Order conclusive evidence.

742. Order conclusive evidence.

Subject to any right of appeal, an order made by the court against a contributory is conclusive evidence that the money, if any, appearing by it to be due or ordered to be paid, is due¹. All other pertinent matters stated in the order are to be taken to be truly stated as against all persons and in all proceedings².

1 Insolvency Act 1986 s 152(1). As to a balance order for payment of calls see para 736 ante.

2 Ibid s 152(2).

UPDATE

438-938 Winding Up by the Court

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743. Arrest of contributory and seizure of his books.

At any time, either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls, the court may cause the contributory to be arrested and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the court may order¹. The court may order the seizure of a contributory's goods without ordering the arrest of his person².

¹ Insolvency Act 1986 s 158. The making or conduct of an application to the court by the official receiver pursuant to s 158 for the arrest of a contributory and for the seizure of his books, papers and movable personal property may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 19. As to the official receiver see para 503 et seq ante. As to the contracting out of the official receiver's functions generally see paras 505-506 ante. As to the rules relating to arrests see the Insolvency Rules 1986, SI 1986/1925, rr 7.21, 7.23, 7.24; and paras 685 ante, 1027-1028 post. For the meaning of 'United Kingdom' see para 12 note 2 ante.

² *Re Imperial Mercantile Credit Co* (1867) LR 5 Eq 264.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(10) PROPERTY AVAILABLE FOR DISTRIBUTION AMONG CREDITORS AND CONTRIBUTORIES/(vi) Realisation of Property/744. Liquidator's power of sale.

(vi) Realisation of Property

744. Liquidator's power of sale.

The liquidator in a winding up by the court has power to sell the company's property¹ by public auction or private contract, as a whole or in parcels², and to do all acts and to execute, in its name and on its behalf, all deeds, receipts and other documents, for which purpose he may use its seal when necessary³. The power may be exercised without the sanction of the court or of the liquidation committee⁴, although the exercise of the power is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of it⁵. The liquidator himself may apply to the court for directions as to the sale⁶. The property may be sold to a new company so as to effect a reconstruction, and the sale may be for a consideration other than cash⁷. A claim for misfeasance against directors or promoters may be sold⁸.

The liquidator and the members of the liquidation committee and their associates are precluded from purchasing any part of the company's assets unless certain conditions are satisfied⁹.

1 As to the meaning of 'property' see para 489 note 8 ante. Neither a cause of action under the Insolvency Act 1986 s 214 (wrongful trading: see para 914 post) nor the fruits of such a claim are the company's property: *Re Oasis Merchandising Services Ltd*, *Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA.

2 See the Insolvency Act 1986 s 167(1)(b), Sch 4 para 6; and para 577 ante.

3 See *ibid* Sch 4 para 7; and para 577 ante.

4 *Ibid* s 167(1)(b). This is, however, subject to s 167(2): see para 579 ante.

5 See *ibid* s 167(3); and para 580 ante. The court will interfere only where the liquidator is acting in a manner in which no reasonable liquidator could act: see *Leon v York-O-Matic Ltd* [1966] 3 All ER 277, [1966] 1 WLR 1450; *Re Edenote Ltd Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, [1996] BCC 718, CA. The test set out in *Leon v York-O-Matic Ltd* supra applies where the decision of the liquidator is a practical administrative decision to realise assets but not, for example, where the liquidator is deciding priority as between creditors: *Mitchell v Buckingham International plc (in liquidation)* [1998] 2 BCLC 369, [1998] BCC 943, CA. When a sale is sanctioned by the court, the Court of Appeal will not readily interfere: *Re Oriental Bank Corpn* (1887) 56 LT 868, CA. Where a liquidator seeks directions from the court as to whether to assign a cause of action to a third party, the court may adapt the procedure in *Re Moritz (Decd)*, *Midland Bank Executor and Trustee Co Ltd v Forbes* [1960] 1 Ch 251, [1959] 3 All ER 767, whereby the court hears submissions and evidence in the absence of the person against whom the cause of action lies: *Re Hinckley Island Hotel Ltd*, *Craig v Humberclyde Industrial Finance Group Ltd* [1999] 1 WLR 129, [1998] 2 BCLC 526, CA. As to the effect of the Law of Property Act 1925 s 204 relating to the conclusiveness of orders of court see SALE OF LAND vol 42 (Reissue) para 133.

6 See the Insolvency Act 1986 s 168(3); and para 572 ante. As to the liquidator's power to disclaim onerous property see para 866 et seq post; and as to the making of an order declaring a dissolution void for the purpose of enabling a liquidator to make title see para 937 post.

7 *Re Agra and Masterman's Bank* (1866) LR 12 Eq 509n (deferred payments secured by promissory notes); cf *Re Albert Life Assurance Co* (1871) 6 Ch App 381; *Re Bank of South Australia (No 2)* [1895] 1 Ch 578, CA; *Re Cambrian Mining Co* (1882) 48 LT 114 (where the court imposed a term that dissentients should have the same rights as they would have had on a sale in a voluntary winding up).

8 *Re Park Gate Waggon Works Co* (1881) 17 ChD 234, CA; *Wood v Woodhouse and Rawson United* [1896] WN 4; cf *New Westminster Brewery Co v Hannah* (1876) 24 WR 899 (where it was held that the claim did not in

fact pass on the sale). A cause of action under the Insolvency Act 1986 s 214 (see para 914 post) cannot be sold by the liquidator: *Re Oasis Merchandising Services Ltd*, *Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA. See also COMPANIES vol 15 (2009) PARA 1762. As to the sale of causes of action by a liquidator see *Weddell v JA Pearce & Major* [1988] Ch 26, [1987] 3 All ER 624; *Groewood Holdings plc v James Capel & Co Ltd* [1995] Ch 80, [1994] 4 All ER 417; *Re Oasis Merchandising Services Ltd* supra; *Re Edennote Ltd*, *Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, [1996] BCC 718, CA; *Circuit Systems Ltd (in liquidation) v Zuken-Redac (UK) Ltd* [1996] 3 All ER 748, [1997] 1 WLR 721, CA (affd [1999] 2 AC 1, [1998] 1 All ER 218, HL) (if the agreement in respect of which the cause of actions arises is not assignable, a liquidator is unable to assign the cause of action); *ANC Ltd v Clark Goldring & Page Ltd* [2001] BCC 479, [2001] BPIR 568; *Farmer v Moseley (Holdings) Ltd* [2001] 2 BCLC 572, [2002] BPIR 473.

9 See paras 567, 643 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

744 Liquidator's power of sale

NOTE 3--See also *Ruttle Plant Hire v Secretary of State for the Environment and Rural Affairs* [2007] EWHC 2870 (TCC), [2008] 2 BCLC 345.

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745. Conveyances or transfers on sale.

Since, in the absence of a special order¹, the property is not vested in the liquidator², he is not a necessary party to conveyances or transfers made by the company in liquidation unless a vesting order has been made. In practice a company in liquidation does not normally give any covenants for title, the conveyance or transfer providing that no covenants for title express or implied, whether by statute or otherwise, are given by the company. Even if the company were to give such covenants, they would be of little value as the company will eventually be dissolved.

¹ As to a special order vesting the company's property in the liquidator see para 575 ante.

² See para 674 ante. As to conveyances where a receiver has been appointed and the company is in liquidation see *Sowman v David Samuel Trust Ltd* [1978] 1 All ER 616, [1978] 1 WLR 22; and COMPANIES vol 15 (2009) PARA 1350.

UPDATE

438-938 Winding Up by the Court

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746. Documents exempt from stamp duty.

In a winding up by the court of a company registered in England and Wales, every assurance¹ relating solely to freehold or leasehold property, or to any estate, right or interest in any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and every writ, order, certificate or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under such winding up, is exempt from duties chargeable under the enactments relating to stamp duties².

¹ For these purposes, 'assurance' includes deed, conveyance, assignment and surrender: Insolvency Act 1986 s 190(2).

² Ibid s 190(1), (2). Section 190 applies also in the case of a creditors' voluntary winding up: s 190(1).

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(vii) Carrying on the Company's Business

747. Permission necessary to carry on the business.

With the sanction either of the court or of the liquidation committee¹, the liquidator may carry on the company's business so far as may be necessary² for the beneficial winding up of the company³. He cannot, however, carry on the business with the view of making a profit for the company⁴ or of facilitating reconstruction⁵. Contracts may be made for the purposes of the beneficial winding up of the company⁶, and the onus of proving that a contract is not beneficial lies upon the party objecting to it⁷. Debts and liabilities incurred in the course of carrying on the business for those purposes are in the nature of salvage and rank for payment in priority to the company's general debts and liabilities⁸. The liquidator is also entitled in priority to his proper remuneration⁹.

The rules impose on liquidators and members of the liquidation committee and their associates restrictions against receiving the company's property or deriving profits from the administration of the estate unless certain conditions are satisfied¹⁰.

1 See para 578 ante. Such sanction is not generally required in a voluntary winding up: see para 960 post.

2 'Necessary' means that the carrying on of the business must not merely be beneficial but something more, though the necessity must be determined by the court which is asked to give its sanction, having regard to all the circumstances of the case: *Re Wreck Recovery and Salvage Co* (1880) 15 ChD 353 at 360, CA. The liquidator's conduct is not to be judged by an objective standard set up after the event; it is sufficient if in good faith he reasonably forms the opinion that the carrying on of the business is necessary for the beneficial winding up of the company: *Re Great Eastern Electric Co Ltd* [1941] Ch 241 at 246, [1941] 1 All ER 409 at 412.

3 See the Insolvency Act 1986 s 167(1)(a), Sch 4 para 5; and para 578 ante. In view of the existence of this power, a company cannot be treated as incapacitated from fulfilling a contract merely because it has gone into liquidation: *British Waggon Co v Lea* (1880) 5 QBD 149. As to the exercise of the power in a voluntary liquidation see para 960 post.

4 *Re Batey, ex p Emmanuel* (1881) 17 ChD 35, CA (a bankruptcy case).

5 *Re Wreck Recovery and Salvage Co* (1880) 15 ChD 353, CA; *Re Regent's Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411, CA.

6 *Re Wreck Recovery and Salvage Co* (1880) 15 ChD 353 at 361-362, CA; *Re Regent's Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411, CA. The liquidator may by conduct ratify contracts made by the directors as special managers in excess of their authority: *Re Mawcon Ltd* [1969] 1 All ER 188, [1969] 1 WLR 78.

7 *Hire Purchase Furnishing Co v Richens* (1887) 20 QBD 387, CA; *Bateman & Co v Ball* (1887) 56 LJQB 291.

8 *Re S Davis & Co Ltd* [1945] Ch 402 at 407; *Re Great Eastern Electric Co Ltd* [1941] Ch 241, [1941] 1 All ER 409. Cf, however, *Re Regent's Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411, CA, where the costs of carrying on the business under an agreement sanctioned by the court were held not to have priority over the claims of debenture holders who were not before the court when the agreement was sanctioned. As to the prescribed order of priority of the fees and expenses of the winding up see para 810 et seq post.

9 *Re Great Eastern Electric Co Ltd* [1941] Ch 241, [1941] 1 All ER 409 (a case of a voluntary winding up).

10 See paras 567, 643 ante.

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748. Liquidator carrying on business.

Where the liquidator carries on any business of the company, he must keep a separate and distinct account of the trading, including, where appropriate, particulars of all local bank account transactions and must incorporate in the financial records required to be kept the total weekly amounts of the receipts and payments made by him in relation to such account¹.

¹ See the Insolvency Regulations 1994, SI 1994/2507, reg 12(2); and para 597 ante. As to the records required to be kept by the liquidator see paras 595, 598 ante; and as to the liquidator's powers to open a local bank account see para 605 ante.

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438-938 Winding Up by the Court

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(11) PROOF OF DEBTS

(i) Provable Debts

749. What debts are provable; meaning of 'debt' and 'liability'.

All claims by creditors are provable as debts against the company whether they are present or future¹, certain or contingent², ascertained or sounding only in damages³. Any obligation arising under a confiscation order⁴ is, however, not provable⁵; and certain claims⁶ are not provable except at a time when all other claims of creditors in the winding up have been paid in full with interest⁷. Notwithstanding these provisions, proof cannot be made where under any enactment or rule of law a particular kind of debt is not provable, whether on grounds of public policy or otherwise⁸.

In relation to the winding up of a company, 'debt' means any of:

- 1133 (1) any debt or liability to which the company is subject at the date on which it goes into liquidation⁹;
- 1134 (2) any debt or liability to which the company may become subject after that date by reason of any obligation incurred before that date¹⁰; and
- 1135 (3) any interest provable¹¹.

In determining¹² whether any liability in tort is a debt provable in the winding up, the company is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued¹³.

It is immaterial¹⁴ whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion¹⁵; and, subject to this, 'liability'¹⁶ means a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution¹⁷.

The right of proof cannot be insisted upon in every case; it is a well established principle that there cannot be two proofs in respect of one debt, and this is so even if there are separate contracts in respect of the same debt¹⁸.

1 As to future claims see para 796 post.

2 As to contingent claims and claims bearing an uncertain value see para 790 post. Claims for unassessed costs are provable: *Tottenham Hotspur plc v Edennote plc* [1995] 1 BCLC 65, [1994] BCC 681.

3 Insolvency Rules 1986, SI 1986/1925, r 12.3(1). For the meaning of 'prove' and the procedure for proving a debt see para 775 et seq post.

4 Ie an order under the Drug Trafficking Offences Act 1986 s 1 (repealed), the Criminal Justice Act 1988 s 71 (as amended), or the Proceeds of Crime Act 2002 Pt 2 (ss 6-91): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

5 Insolvency Rules 1986, SI 1986/1925, r 12.3(2)(b) (amended by SI 1987/1919; SI 1989/397).

6 Ie any claim arising by virtue of the Financial Services and Markets Act 2000 s 382(1)(a) (not being a claim also arising by virtue of s 382(1)(b)) or any claim which by virtue of the Insolvency Act 1986 or any other enactment is a claim the payment of which in a winding up is to be postponed: Insolvency Rules 1986, SI 1986/1925, r 12.3(2A) (added by SI 1987/1919; and amended by SI 2001/3649; SI 2003/1730). As to the Financial Services and Markets Act 2000 s 382(1) see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 472.

7 Insolvency Rules 1986 r 12.3(2A) (as added and amended: see note 6 supra). The reference to interest is a reference to that payable under the Insolvency Act 1986 s 189(2) (see para 827 post): Insolvency Rules 1986, SI 1986/1925, r 12.3(2A) (as so added and amended).

8 Ibid r 12.3(3). For example, a revenue claim by a foreign government is not provable: *Government of India, Ministry of Finance (Revenue Division) v Taylor* [1955] AC 491, [1955] 1 All ER 292, HL; cf *Peter Buchanan Ltd and Macharg v McVey* (1951) (a decision of the Supreme Court of the Republic of Ireland, reported at [1955] AC 516n at 530n); *Metal Industries (Salvage) Ltd v ST Harle (Owners)* 1962 SLT 114, Ct of Sess; *Re Gibbons, ex p Walter* [1960] Ir Jur Rep 60; and see *Brokaw v Seatrain UK Ltd* [1971] 2 QB 476, [1971] 2 All ER 98, CA. See also para 1009 note 3 post.

9 Insolvency Rules 1986, SI 1986/1925, r 13.12(1)(a). For the meaning of 'go into liquidation' see para 9 note 3 ante. A debt will no longer be provable where it has been discharged in the jurisdiction of the proper law of the debt after the winding-up order is made: *Wight v Eckhardt Marine GmbH* [2003] UKPC 37, [2004] 1 AC 147.

10 Insolvency Rules 1986, SI 1986/1925, r 13.12(1)(b).

11 Ibid r 13.12(1)(c). As to interest provable see r 4.93(1); and para 795 post.

12 Ie for the purposes of any provision of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

13 Ibid r 13.12(2).

14 Ie for the purposes of references to a debt or liability in any provision of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended) about winding up.

15 Ibid r 13.12(3). References to owing a debt are to be construed accordingly: r 13.12(3).

16 Ie in any provision of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended) about winding up, except in so far as the context otherwise requires.

17 Ibid r 13.12(4).

18 *Re Oriental Commercial Bank, ex p European Bank* (1871) 7 Ch App 99; *Re Hoey, ex p Hoey* (1918) 88 LJKB 273, DC; *Deering v Bank of Ireland* (1886) 12 App Cas 20, HL; and see *Barclays Bank Ltd v TOSG Trust Fund Ltd* [1984] AC 626, [1984] 1 All ER 1060, HL; *Re Polly Peck International plc, Barlow v Polly Peck International Finance Ltd* [1996] 2 All ER 433, [1996] 1 BCLC 428 (a scheme of arrangement). The first two cases supra were cited and applied in *The Liverpool (No 2)* [1963] P 64 at 80, [1960] 3 All ER 307 at 313, CA (a salvage case); *Re Oriental Commercial Bank, ex p European Bank* supra was applied and *The Liverpool (No 2)* supra was distinguished by the Court of Appeal in *Barclays Bank Ltd v TOSG Trust Fund Ltd* supra.

Although the rule against double proof is not expressly applied by the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended), the rule against double proof had originally been applied as a rule in Chancery, rather than a rule in bankruptcy only (*Re Oriental Commercial Bank, ex p European Bank* supra), and it is clear that it continues to apply under these provisions (see eg *Re Parkfield Group plc* [1998] 1 BCLC 451, [1997] BCC 778).

As to the application of the rule against double proof to set-off see para 792 post; and as to the application of the rule against double proof to claims in respect of guarantees see para 760 post.

UPDATE

438-938 Winding Up by the Court

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749 What debts are provable; meaning of 'debt' and 'liability'

NOTE 2--See also *Re Beloit Walmsley Ltd* [2008] EWHC 1888 (Ch), [2008] BPIR 1445 (contingent claims in tort).

TEXT AND NOTES 9-17--SI 1986/1925 r 13.12 substituted by SI 2006/1272, amended by SI 2010/686. SI 1986/1925 r 13.12 applies to administration, a liquidation and a winding up: r 13.12(5). A liability in tort is a debt provable in the winding up if either (1) the cause of action has accrued, in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation, and in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration, or (2) all the elements necessary to establish the cause of action exist at that date except for actionable damage: r 13.12(2).

NOTE 10--An employer's duty under the Trade Union (Labour Relations) Consolidation Act 1992 s 188 (see EMPLOYMENT vol 41 (2009) PARAS 1152-1154) to consult employees before redundancy is an 'obligation incurred' within the meaning of the 1986 Rules r 13.12(1)(b): *Haine v Day* [2008] EWCA Civ 626, [2008] IRLR 642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(i) Provable Debts/750. Pre-incorporation contracts.

750. Pre-incorporation contracts.

Claims under contracts made on behalf of a company before its registration, or before it is entitled to commence business, cannot be proved for, unless the contracts have been adopted by the company¹.

¹ *Re National Motor Mail-Coach Co Ltd, Clinton's Claim* [1908] 2 Ch 515, CA; *New Druce-Portland Co Ltd v Blakiston* (1908) 24 TLR 583. As to such contracts see COMPANIES vol 14 (2009) PARA 279.

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751. Breach of contract in general.

Proof may be made for damages for breach of contract, for example for breach of a contract to buy goods¹, to purchase a business or to repair a ship², to give fully paid shares in satisfaction of a debt³, or to employ a person as an employee of the company⁴. The claim may include the damage sustained under a continuing breach of contract after the winding up commenced⁵.

1 *Re Contract Corpn Ebbw Vale Co's Claim* (1869) LR 8 Eq 14. As to the measure of damages in contract generally see DAMAGES.

2 *Charles Laffitte & Co v Laffitte* (1873) 42 LJ Ch 716, HL.

3 *Re Railway Time Tables Publishing Co Ltd, ex p Welton* [1899] 1 Ch 108, CA.

4 See para 752 post.

5 *Re Trent and Humber Co, ex p Cambrian Steam Packet Co* (1868) 4 Ch App 112. As to the enforceability of contracts entered into ultra vires the company see COMPANIES; cf *Re Jon Beauforte (London) Ltd, Grainger Smith & Co (Builders) Ltd, John Wright & Sons (Veneers) Ltd and Lowell Baldwin Ltd's Applications* [1953] Ch 131, [1953] 1 All ER 634.

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752. Breach of contracts of service.

The making of a winding-up order¹ operates as a wrongful dismissal of the company's employees, and they may prove for damages for breach of the contract of service². Where by the contract a fixed sum is to be paid to an employee by way of liquidated damages in case the contract is determined before the expiration of the term of service, proof is allowed for the agreed sum³. If, however, the sum is fixed very much in excess of the damage suffered, the court will treat it as a penalty and will not allow a claim for the whole amount, but will give the employee leave to prove on the principles mentioned below⁴. Where no sum is fixed, proof is allowed for the present value of the salary for the remainder of the term, less a deduction in respect of the employee's being at liberty to obtain other employment⁵.

Where an agent is to be paid partly by salary and partly by a commission on business done, he is not as a rule entitled to prove for loss of commission⁶. The question whether he may recover damages for loss of commission depends on the construction of the contract and the actual loss suffered; and, where payment is entirely by commission, proof may be allowed in respect of commission which might have been earned during the remainder of the period of service fixed by the agreement⁷.

¹ As to whether a voluntary winding up operates as a dismissal of employees see COMPANIES and as to the effect of the appointment of a receiver by debenture holders out of court and in a debenture holders' action respectively see COMPANIES vol 15 (2009) PARAS 1342, 1373.

² *Chapman's Case* (1866) LR 1 Eq 346; *Macdowall's Case* (1886) 32 ChD 366; and see *Re English Joint Stock Bank, ex p Harding* (1867) LR 3 Eq 341; *Re Demaglass Holdings Ltd* [2001] 2 BCLC 633.

³ *Re London and Scottish Bank, ex p Logan* (1870) LR 9 Eq 149; *Shirreff's Case* (1872) LR 14 Eq 417. As to the effect of an agreement for payment of a share of 'net profit' see COMPANIES vol 14 (2009) PARA 521.

⁴ *Re WR Snow & Co Ltd* (1930) 74 Sol Jo 201. As to the distinction between liquidated damages and a penalty see DAMAGES vol 12(1) (Reissue) paras 1065-1066.

⁵ *Yelland's Case* (1867) LR 4 Eq 350; *Re London and Colonial Co, ex p Clark* (1869) LR 7 Eq 550; *Hartland v General Exchange Bank Ltd* (1866) 14 LT 863; *Re RS Newman Ltd, Raphael's Claim* [1916] 2 Ch 309, CA; and see generally EMPLOYMENT. As to proofs by directors see *Re General Preserving Co Ltd* [1937] 1 All ER 693; and COMPANIES vol 14 (2009) PARA 521.

⁶ *Re English and Scottish Marine Insurance Co, ex p Maclure* (1870) 5 Ch App 737, followed in *Re RS Newman Ltd, Raphael's Claim* [1916] 2 Ch 309, CA; *Rhodes v Forwood* (1876) 1 App Cas 256, HL; cf *Ogdens Ltd v Nelson* [1905] AC 109, HL.

⁷ *Re Patent Floor Cloth Co Ltd, Dean and Gilbert's Claim* (1872) 41 LJ Ch 476. An obligation to continue in business will not be implied; but the contract may by its terms give to the employee a right to a continuing benefit: *Reigate v Union Manufacturing Co (Ramsbottom) Ltd and Elton Cop Dyeing Co Ltd* [1918] 1 KB 592, CA. See *Billingham v Hughes* [1949] 1 KB 643, [1949] 1 All ER 684, CA (no reduction of damages for prospective income tax). See further AGENCY vol 1 (2008) PARA 183.

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753. Pensions.

A retired employee to whom a pension is granted gratuitously may not prove for its capital value¹; nor may he prove if he is granted a pension under a contract where he is employed in business which is ultra vires the company². Where the company is contractually liable to pay the pension, the sum for which proof may be made must take income tax into account³.

1 *Re Birkbeck Permanent Benefit Building Society* [1913] 1 Ch 400; cf *Re Profits and Income Insurance Co Ltd* [1929] 1 Ch 262 (where, though it is not stated, there must have been a contract to pay the pension provided for).

2 *Re Birkbeck Permanent Benefit Building Society* [1913] 1 Ch 400 at 404; but see further COMPANIES.

3 *Re Houghton Main Colliery Co Ltd* [1956] 3 All ER 300, [1956] 1 WLR 1219.

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754. Indemnity.

A person holding shares in another company on which there is a liability as trustee for a company in liquidation may prove in its winding up for an indemnity against that liability¹.

¹ *Re National Financial Co, ex p Oriental Commercial Bank* (1868) 3 Ch App 791.

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755. Third parties' insurance rights.

When a winding-up order is made against a company which is insured against liabilities to third parties, the company's rights against the insurer in respect of that liability are transferred to, and vest in, the third party¹. If the insurer's liability to the company is less than the company's liability to the third party, the third party may prove in the liquidation for the balance².

¹ See para 673 ante. As to the corresponding transfer of rights where a receiver is appointed out of court see COMPANIES vol 15 (2009) PARA 1354. As to special provisions applicable in the case of compulsory motor vehicle insurance see para 673 note 3 ante.

² See the Third Parties (Rights against Insurers) Act 1930 s 1(4)(b); and INSURANCE vol 25 (2003 Reissue) para 681. Corresponding rights were conferred on workmen under the Workmen's Compensation Act 1925 s 7(2) (repealed). As to contingent claims by workmen see *Re Armstrong Whitworth Securities Co Ltd* [1947] Ch 673, [1947] 2 All ER 479. Except when the insurers' liability to the workman is less than the company's liability to the workman, the workman cannot by virtue of those rights prove in the liquidation if there are rights against an insurer capable of being transferred to him (*Re Pethick, Dix & Co, Burrow's Claim* [1915] 1 Ch 26), even though the insurers were wound up prior to the winding up of the company (*Re Renishaw Iron Co Ltd* [1917] 1 Ch 199).

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756. Debentures.

Mortgagees of debentures are entitled to dividends on the face value of their securities *pari passu* with the other debenture holders of the same series until the mortgage money has been paid in full¹.

¹ *Re Regent's Canal Ironworks Co* (1876) 3 ChD 43, CA; *Robinson v Montgomeryshire Brewery Co* [1896] 2 Ch 841; *Platt v Casey's Drogheda Brewery Co* [1912] 1 IR 279 (where the trustees of the trust deed securing the debentures successfully moved for recoupment by some debenture holders, the remainder being mortgagees of debentures, and the distribution having taken place on the basis of the amount advanced by each debenture holder). For a form of order adjusting cross-claims between two companies both of which are in liquidation, the first being indebted to the second in respect of debentures, and the second owing to the first money ordered to be paid in misfeasance proceedings see *Re Leeds and Hanley Theatres of Varieties Ltd* [1904] 2 Ch 45. As to proofs generally, on debentures and other securities, in a winding up see paras 797-798 post.

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757. Gratuitous payments.

In a proper case, a gratuitous payment may be made with the sanction of the court in respect of a claim not admissible as of right¹.

¹ *Re Banque des Marchands de Moscou (Koupetschesky)* [1953] 1 All ER 278, [1953] 1 WLR 172 (where the claimant had rendered special services prior to the liquidation in relation to the affairs of the company and whilst it was legally not in existence).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(i) Provable Debts/758. Statute-barred debts.

758. Statute-barred debts.

Time under the Limitation Act 1980¹ ceases to run against a creditor on a winding-up order being made; and he is allowed to prove at any time before the company is dissolved, subject to the ordinary rule as to not interfering with dividends already paid². A proof in respect of claims statute-barred before the order is not allowed³.

¹ See LIMITATION PERIODS.

² See para 776 post. See also *Re General Rolling Stock Co Ltd, Joint Stock Discount Co's Claim* (1872) 7 Ch App 646. This rule applies also in a voluntary winding up: *Re Fleetwood and District Electric Light and Power Syndicate* [1915] 1 Ch 486. Time ceases to run against a petitioner when the winding-up petition is presented, but against all other creditors, including those who have supported the petition, time ceases to run on the making of the winding-up order: *Re Cases of Taffs Well Ltd* [1992] Ch 179, [1991] 3 WLR 731.

³ *Re River Steamer Co, Mitchell's Claim* (1871) 6 Ch App 822; *Re Overmark Smith Warden Ltd* [1982] 3 All ER 513, [1982] 1 WLR 1195; *Re Joshua Shaw & Sons Ltd* [1989] BCLC 362, 5 BCC 188 (where due to a long-running receivership the entirety of the claims of the unsecured creditors had become statute-barred, resulting in a distribution to the shareholders). This rule applies also in a voluntary winding up: *Re Art Reproduction Co Ltd* [1952] Ch 89, [1951] 2 All ER 984; and see para 1000 post. Cf BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 502.

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759. Landlords' rights.

Before the date of winding up the company may have owned leasehold property which it has subsequently assigned, or it may still be the owner of such property at the date of its winding up. In this case, there are three possible ways in which the liquidator may deal with it:

- 1136 (1) if the lease is a beneficial one, or at any rate not onerous, he may assign it for value;
- 1137 (2) if the lease is an onerous one, he may disclaim it under the statutory power on giving notice in the prescribed form¹; and
- 1138 (3) he may continue in beneficial occupation of the property comprised in the lease.

Where the property has been assigned, whether before or after the liquidation, then, if the company was in the position of an original tenant, so that upon the eventual dissolution of the company the landlord will lose the benefit of its covenant to pay the rent and perform the obligations of the lease during the remainder of the term, the landlord may prove for his loss, to be measured by the difference in the market value of his reversion with and without the company's covenant². If the company was not, or was not in the position of, an original tenant, the assignor of the lease to the company will similarly be entitled to prove for the value of the loss of its covenant of indemnity³. As an alternative to the landlord's proving, the court has a discretion to order the setting aside of a fund to meet the company's contingent obligations under its covenants; but the court will not make such an order save in the most exceptional circumstances⁴.

Where the liquidator disclaims, the landlord, if injured, is deemed to be a creditor of the company and may prove for his loss accordingly⁵; and the landlord may also prove for his loss if he is willing to accept a surrender, if he is allowed to prove⁶.

Where the liquidator continues in occupation for the benefit of the liquidation⁷, the landlord is entitled to receive his rent in full, and to have the covenants of the lease performed. Therefore, although he may prove only for rent accrued and breaches of covenant before the date of the proof⁸, the landlord may enter a claim for the whole of the company's future obligations under the lease⁹. Although he is not entitled to an immediate dividend, at the rate paid to other creditors, on the amount of this claim, distribution of the assets amongst contributories will not be allowed until a sufficient fund has been set aside to meet all his future claims¹⁰.

1 See the Insolvency Act 1986 s 178; and para 866 post.

2 *James Smith & Sons (Norwood) Ltd v Goodman* [1936] Ch 216, CA; *Re House Property and Investment Co Ltd* [1954] Ch 576, [1953] 2 All ER 1525. The landlord will not suffer loss, and hence will not prove in the liquidation, where the tenancy is subject to the provisions of the Landlord and Tenant (Covenants) Act 1995 s 5 (which applies to new tenancies only): see s 1(1); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) paras 578, 611. For the meaning of 'new tenancy' see para 866 note 5 post.

3 Cf *Craig's Claim* [1895] 1 Ch 267; compromised on appeal sub nom *Craig v Midland Coal and Iron Co* (1896) 74 LT 744. The assignor will not suffer loss, and hence will not prove in the liquidation, where the tenancy is subject to the provisions of the Landlord and Tenant (Covenants) Act 1995 s 5. See note 2 supra.

4 See *Re House Property Investment Co Ltd* [1954] Ch 576 at 609-610, [1953] 2 All ER 1525 at 1544, where it was intimated that it was unlikely that any setting aside would be ordered in future cases of assignments. As to tenancies subject to the provisions of the Landlord and Tenant (Covenants) Act 1995 s 5 see note 2 *supra*.

5 See the Insolvency Act 1986 s 178(6); and para 879 *post*.

6 *Re Panther Lead Co* [1896] 1 Ch 978.

7 See *Re ABC Coupler and Engineering Co Ltd (No 3)* [1970] 1 All ER 650, [1970] 1 WLR 702; and para 890 *post*.

8 *Re New Oriental Bank Corpn (No 2)* [1895] 1 Ch 753; *Metropolis Estates Co Ltd v Wilde* [1940] 2 KB 536, [1940] 3 All ER 522, CA.

9 *Re Haytor Granite Co* (1865) 1 Ch App 77; *Re New Oriental Bank Corpn (No 2)* [1895] 1 Ch 753.

10 *Oppenheimer v British and Foreign Exchange and Investment Bank* (1877) 6 ChD 744; *Gooch v London Banking Association* (1885) 32 ChD 41 (compromised on appeal (1886) 32 ChD 49, CA); *Lord Elphinstone v Monkland Iron and Coal Co* (1886) 11 App Cas 332, HL; *Craig's Claim* [1895] 1 Ch 267; cf *Re Telegraph Construction Co* (1870) LR 10 Eq 384; *Re Palace Billiard Rooms Ltd and Reduced, Petitioners* 1912 SC 5, Ct of Sess (cases of reduction of capital). It is necessary when considering the old cases to bear in mind that, until the decision of the House of Lords in *Hardy v Fothergill* (1888) 13 App Cas 351 (a bankruptcy case), it had been thought that the value to the landlord of an original tenant's covenant was incapable of estimation, and that before the enactment of the Companies Act 1929 the liquidator had no power of disclaimer. The cases were considered in *Re House Property and Investment Co Ltd* [1954] Ch 576, [1953] 2 All ER 1525.

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760. Guarantees; other claims.

When a guarantee limits a surety's liability to a fixed sum, the surety may be liable either to pay a limited sum towards the ultimate balance remaining due after all money obtainable from other sources has been applied in reducing the debt of the principal debtor or as surety for a part of the debt only¹. In the former case, the creditor has the right to prove against the company for the whole of his debt until he has received 100 pence in the pound, notwithstanding that he has received some payment from the surety; and the surety has not by reason of that payment any right of proof in preference or priority to the creditor². The creditor is not entitled to the benefit of a security obtained by the surety from the debtor, and so need have no regard to it in his proof³.

A creditor may not prove against the estate of an insolvent surety on his guarantee. He must, however, establish the surety's liability, and, in the absence of agreement, this cannot be done merely by showing that the debtor has admitted the debt, or that judgment for it has been signed against him⁴. The creditor must give credit for any amount which he has realised before proving, or for dividends which have been declared in the principal debtor's insolvency, even if not actually received⁵; but, where there are several sureties jointly and severally liable, the creditor is entitled to prove against the insolvent surety's estate for the whole of the debt, without giving credit for any sums received from the other co-sureties since the date of the winding-up order, provided that he does not recover more than 100 pence in the pound in all⁶. Money deposited with the creditor by a co-surety, to be appropriated by the creditor when he thinks fit towards payment, so far as it will go, of the debt, need not be deducted when the creditor proves against the surety's estate before the appropriation⁷.

A surety cannot exercise a right of proof in the debtor's winding up, so long as the principal creditor has not been paid in full in respect of the debt guaranteed and has himself proved or is entitled to prove⁸.

A surety has a right of proof against a co-surety for a just proportion of the debt when he has paid the creditor's debt and taken an assignment of his securities⁹; and, even if he has not paid the creditor, and his liability has not been ascertained, he will have a right to a declaration that, when he has paid more than his due proportion, the co-surety must contribute, and in respect of that right he will be entitled to prove against the co-surety's estate¹⁰.

Other claims which are provable in a winding up, including claims of an uncertain value, claims under negotiable instruments, debts in foreign currency, payments of a periodical nature, claims for interest, future debts, and claims by secured creditors, are considered elsewhere in this title¹¹.

1 *Gray v Seckham* (1872) 7 Ch App 680; *Hobson v Bass* (1871) 6 Ch App 792; *Ellis v Emmanuel* (1876) 1 Ex D 157, CA; *Re Sass, ex p National Provincial Bank of England* [1896] 2 QB 12; *Re Butlers Wharf Ltd* [1995] 2 BCLC 43, [1995] BCC 717. As to the liabilities of a surety see further FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1090 et seq.

2 *Re Sass, ex p National Provincial Bank of England* [1896] 2 QB 12, applied in *Ulster Bank Ltd v Lambe* [1966] NI 161. It seems that this rule applies even where the surety's contract does not expressly provide that, as between him and the creditor, the creditor is to have the benefit of all dividends: *Re Sass, ex p National Provincial Bank of England* supra. As to waiver of a surety's rights in favour of the creditor see further FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1146. The position is the same even though the payment by the surety may have been made not out of his own money but out of the proceeds of a security given to him by the debtor: *Midland Banking Co v Chambers* (1869) 4 Ch App 398. See also *Re Fernandes, ex p Hope* (1844) 3 Mont

D & De G 720; *Re Sellers, ex p Midland Banking Co* (1878) 38 LT 395; *Re Rees, ex p National Provincial Bank of England* (1881) 17 ChD 98, CA; and see further FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1146.

3 *Re Walker, Sheffield Banking Co v Clayton* [1892] 1 Ch 621; *Re Yewdall, ex p Barnfather* (1877) 46 LJ Bcy 87 (affd 46 LJ Bcy 109, CA).

4 *Re Kitchin, ex p Young* (1881) 17 ChD 668, CA.

5 *Re Blakeley, ex p Aachener Disconto Gesellschaft* (1892) 9 Morr 173; *Re Amalgamated Investment and Property Co Ltd* [1985] Ch 349, [1984] 3 All ER 272. Cf *Re Bunyard, ex p Newton, ex p Griffin* (1880) 16 ChD 330, CA; *Re Firth, ex p Schofield* (1879) 12 ChD 337, CA; *Re Blackburne, ex p Strouts* (1892) 9 Morr 249.

6 *Re Houlder* [1929] 1 Ch 205.

7 *Commercial Bank of Australia Ltd v John Wilson & Co's Estate, Official Assignee* [1893] AC 181, PC.

8 *Re Fenton, ex p Fenton Textile Association Ltd* [1931] 1 Ch 85, CA (in which the following earlier decisions were reviewed: *Re Parrott, ex p Whittaker* (1891) 39 WR 400; *Re Paine, ex p Read* [1897] 1 QB 122; *Re Herepath and Delmar, ex p Delmar* (1890) 7 Morr 129 at 190; *Wolmershausen v Gullick* [1893] 2 Ch 514; *Re Blackpool Motor Car Co Ltd, Hamilton v Blackpool Motor Car Co Ltd* [1901] 1 Ch 77). The difficulty is that there cannot be double proof in respect of the same debt (see *Re Oriental Commercial Bank, ex p European Bank* (1871) 7 Ch App 99; *Re Fenton, ex p Fenton Textile Association* supra at 109; and para 749 ante), so that, if the principal creditor has not been paid off and proves, the surety's proof would not be effective (see *Re West End Networks Ltd (in liquidation), Secretary of State for Trade and Industry v Frid* [2004] UKHL 24 at [13], [2004] 2 All ER 1042 at [13], [2004] 2 WLR 1279 at [13] per Lord Hoffmann).

9 *Re Clark, ex p Stokes and Goodman* (1848) De G 618; *Re Parker, Morgan v Hill* [1894] 3 Ch 400, CA. See also *Re Snowden, ex p Snowden* (1881) 17 ChD 44, CA.

10 *Wolmershausen v Gullick* [1893] 2 Ch 514. The Limitation Act 1980 will not run against the surety until his liability has been ascertained: *Wolmershausen v Gullick* supra.

11 See para 789 et seq post.

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(ii) Priority of Debts

761. What are assets.

The assets available for distribution in the winding up are those which remain after satisfying the claims of secured creditors¹, so far as their rights have not been affected by statute².

1 As to the enforcement of the claims of secured creditors see paras 797-798 post.

2 As to the cases in which preferential debts have by statute priority over the claims of secured creditors see para 772 post.

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762. Priority of Crown debts.

Subject to the statutory provisions with regard to assessed taxes and duties¹, the Crown has no priority in winding up over the other unsecured creditors in respect of debts due to the Crown².

¹ See para 764 et seq post.

² *Food Controller v Cork* [1923] AC 647, HL. As to the application of the Insolvency Act 1986 to the Crown see para 6 ante.

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763. Preferential debts generally.

A reference in the Insolvency Act 1986 to the preferential debts of a company is a reference to contributions to occupational pension schemes, the remuneration etc of employees, and levies on coal and steel production¹. In a winding up², the company's preferential debts must be paid in priority to all other³ debts⁴. Preferential debts rank equally among themselves after the expenses of the winding up⁵ and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions⁶. So far as the assets of the company available for payment of general creditors are insufficient to meet them, preferential debts have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and must be paid accordingly out of any property comprised in or subject to that charge⁷.

1 Insolvency Act 1986 s 386(1) (amended by the Enterprise Act 2002 s 251(3)). As to contributions to occupational pension schemes see para 767 post; as to the remuneration etc of employees see para 769 post; and as to levies on coal and steel production see para 768 post. The preferential debts of a company also include money owed to the Inland Revenue for income tax deducted at source (see para 764 post), value added tax, insurance premium tax, landfill tax, climate change levy, aggregates levy, car tax, beer duty, betting and gaming duties (including lottery duty), air passenger duty (see para 765 post), and social security contributions (see para 766 post), if before 15 September 2003: (1) a petition for an administration order pursuant to the Insolvency Act 1986 Pt II (ss 8-27) (as amended) (see para 145 et seq ante) is presented; (2) a voluntary arrangement under Pt I (ss 1-7B) (as amended) (see para 71 et seq ante) has effect; (3) a receiver is appointed under the terms of a charge (which when created was a floating charge) in relation to the property of a company subject to the charge; (4) a petition for a winding-up order is presented; (5) a resolution for the winding up of the company is passed; (6) an administration order under Pt II (as amended) is made on a petition presented prior to 15 September 2003, that order is discharged, and immediately on the discharge of that order either a winding-up order is made in respect of the company in question or a resolution for the winding up of the company is passed on or after that date; (7) a winding-up order is made on a petition presented prior to 15 September 2003 and the company enters administration by virtue of an order made under Sch B1 para 37 (as added) or Sch B1 para 38 (as added) (application where company in liquidation: see para 216 ante); (8) a resolution for the winding up of a company is passed before 15 September 2003 and the company enters administration by virtue of an order made under Sch B1 para 38 (as added); (9) a receiver is appointed before 15 September 2003 in respect of a company, the receiver vacates office, and the company in respect of which the receiver is appointed enters administration within the meaning of Sch B1 para 1(2)(b) (as added) (see para 212 note 1 ante) during the period that the receiver is in office or immediately after the end of that period; or (10) proposals for a voluntary arrangement under Pt I (as amended) are made (whether before or after 15 September 2003) by: (a) a liquidator in a winding up where the winding up petition was presented or, as the case may be, the resolution for winding up was passed, before 15 September 2003; or (b) an administrator appointed in relation to an administration under Pt II (as amended) where the administration order is made on a petition presented before 15 September 2003: see s 386(1) (amended by the Finance Act 1991 s 7, Sch 2 para 21A; the Finance Act 1993 s 36(1); the Finance Act 1994 s 64, Sch 7 para 7(2); the Finance Act 1995 s 17; the Finance Act 1996 s 60, Sch 5 para 12(1); the Finance Act 2000 s 30(2), Sch 7 para 3(1)(a); the Finance Act 2001 s 27, Sch 5 para 17(1)(a); and the Insolvency (ECSC Levy Debts) Regulations 1987, SI 1987/2093; and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 4(1), (1A)-(1D), (2), (4) (art 4(1A)-(1D) added by SI 2003/2332).

References to preferential creditors are to be read accordingly: Insolvency Act 1986 s 386(1) (as so amended). As to dividends payable to preferential creditors see para 825 post.

As to value added tax generally see VALUE ADDED TAX. As to insurance premium tax see INSURANCE vol 25 (2003 Reissue) para 831 et seq. As to landfill tax see LANDFILL TAX vol 61 (2010) para 901 et seq. As to climate change levy see FUEL AND ENERGY vol 19(1) (2007 Reissue) para 661 et seq. As to betting and gaming duties see LICENSING AND GAMBLING vol 68 (2008) paras 744-793. As to the excise duty on beer see CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) para 431 et seq. As to air passenger duty see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 802 et seq. Aggregates levy was introduced by the Finance Act 2001 Pt II (ss 16-49); and Car Tax has been abolished (see the Car Tax (Abolition) Act 1992).

2 For the corresponding provisions as to preferential debts on the appointment of a receiver or on taking possession on behalf of debenture holders see COMPANIES vol 15 (2009) PARA 1334.

3 Preferential debts have no priority over the claims of secured creditors except in certain cases specified by statute: see para 772 post.

4 Insolvency Act 1986 s 175(1).

5 All fees, costs, charges and expenses incurred in the course of winding up are to be regarded as expenses of the winding up: Insolvency Rules 1986, SI 1986/1925, r 12.2(1) (amended by SI 2003/1730). The costs associated with the prescribed part (see para 109 note 11 ante) must be paid out of the prescribed part: Insolvency Rules 1986, SI 1986/1925, r 12.2(2) (added by SI 2003/1730). As to the order of priority of payment of the expenses in the winding up see para 810 post.

6 Insolvency Act 1986 s 175(2)(a). As to priority of debts other than preferential debts see the Insolvency Rules 1986, SI 1986/1925, r 4.181 (as amended); and para 812 post. As to the power to make provision for the apportionment between assets of different classes or descriptions, of the costs charges and expenses of the winding up and any debts of the insurer of a specified class or description see the Financial Services and Markets Act 2000 s 379(2)(b); and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 508.

7 Insolvency Act 1986 s 175(2)(b). See also para 772 post.

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764. Debts due to the Inland Revenue.

Debts due to the Commissioners of Inland Revenue¹ no longer constitute preferential debts, except in relation to insolvency proceedings initiated before 15 September 2003². In those circumstances, sums due at the relevant date³ from the company: (1) on account of deductions⁴ of income tax from taxable earnings⁵ paid during the period of 12 months next before that date⁶; and (2) in respect of such deductions as are required to be made by the company for that period under the statutory provisions⁷ relating to sub-contractors in the construction industry⁸, are debts due to the Commissioners which constitute preferential debts.

1 As to the Commissioners of Inland Revenue see INCOME TAXATION vol 23(1) (Reissue) para 31 et seq.

2 The Insolvency Act 1986 Sch 6 paras 1, 2, (as amended), which provided that debts due to the Inland Revenue were preferential debts for the purposes of the Act, have been repealed subject to the proviso that they continue to have effect in relation to insolvency proceedings initiated before 15 September 2003 (ie in the circumstances described in para 763 note 1 ante): see the Enterprise Act 2002 ss 251(1)(a), 278(2), Sch 26; and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 3(2)(a), (3). As to preferential debts generally see para 763 ante.

3 Where a company is being wound up in circumstances where money owed to the Inland Revenue for income tax deducted at source, value added tax, insurance premium tax, landfill tax, climate change levy, aggregates levy, car tax, beer duty, betting and gaming duties (including lottery duty), air passenger duty, and social security contributions continue to constitute preferential debts (ie in the circumstances set out in para 763 note 1 ante), 'the relevant date' is: (1) where the company is being wound up by the court and the winding-up order was made immediately upon the discharge of an administration order, the date of the making of the administration order; (2) if the winding up is by the court and the winding-up order was made following conversion of administration into winding up by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 37, the date of the making of the administration order; (3) if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under art 37, the date of the making of the administration order; (4) if not a case falling within head (1), (2) or (3) supra, where the company is being wound up by the court and had not commenced to be wound up voluntarily before the date of the making of the winding-up order, the date of the appointment, or first appointment, of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order; (5) if none of heads (1) to (4) supra applies, the relevant date is the date of the passing of the resolution for the winding up of the company (or, in the case of insolvency proceedings concerning a limited liability partnership, the making of the determination by the partnership that it be wound up voluntarily): Insolvency Act 1986 s 387(1), (3) (s 387(3) amended by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 3(2)(a), (3). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. For the meaning of 'limited liability partnership' see para 71 note 3 ante; and see para 1309 post.

4 The deductions referred to are those which the company was liable to make under PAYE regulations, less the amount of the repayments of income tax which the debtor was liable to make during that period: see the Insolvency Act 1986 Sch 6 para 1 (amended by the Income Tax (Earnings and Pensions) Act 2003 s 722, Sch 6 para 154). See also note 2 supra.

5 Ie as defined by the Income Tax (Earnings and Pensions) Act 2003 s 10 (see INCOME TAXATION).

6 See the Insolvency Act 1986 Sch 6 para 1 (as amended: see note 4 supra). See also note 2 supra.

7 Ie the Income and Corporation Taxes Act 1988 s 559 (as amended): see INCOME TAXATION vol 23(1) (Reissue) para 809 et seq.

8 See the Insolvency Act 1986 Sch 6 para 2 (amended by the Income and Corporation Taxes Act 1988 s 844, Sch 29 para 32, Table). See also note 2 supra.

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765. Debts due to HM Customs and Excise.

Debts due to the Commissioners of Customs and Excise¹ no longer constitute preferential debts, except in relation to insolvency proceedings initiated before 15 September 2003². In those circumstances the following sums due to the Commissioners constitute preferential debts:

- 1139 (1) any value added tax³, insurance premium tax⁴, landfill tax⁵, climate change levy⁶ or aggregates levy⁷ which is referable to the period of six months next before the relevant date⁸;
- 1140 (2) the amount of any car tax⁹ or excise duty on beer¹⁰, and any amount by way of general betting duty¹¹, bingo duty¹², gaming duty¹³ or lottery duty¹⁴, which is due at the relevant date from the company¹⁵ and which became due within a period of 12 months next before that date¹⁶; and
- 1141 (3) any amount which is due by way of air passenger duty¹⁷ from the company at the relevant date and which became due within the period of six months next before that date¹⁸.

1 As to the Commissioners of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 et seq.

2 The Insolvency Act 1986 Sch 6 paras 3, 3A-3D, 4, 5, 5A-5C (as added and amended), which provided that debts due to the Commissioners of Customs and Excise were preferential debts for the purposes of the Act, have been repealed subject to the proviso that they continue to have effect in relation to insolvency proceedings initiated before 15 September 2003 (ie in the circumstances described in para 763 note 1 ante); see the Enterprise Act 2002 ss 251(1)(b), 278(2), Sch 26; and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 3(2)(a), (3). As to preferential debts generally see para 763 ante.

3 As to value added tax generally see VALUE ADDED TAX. As to the position where several companies are given group treatment for value added tax purposes see *Re Nadler Enterprises Ltd* [1980] 3 All ER 350, [1980] 1 WLR 23.

4 As to insurance premium tax see INSURANCE vol 25 (2003 Reissue) para 831 et seq.

5 As to landfill tax see LANDFILL TAX vol 61 (2010) PARA 901 et seq.

6 As to climate change levy see FUEL AND ENERGY vol 19(1) (2007 Reissue) para 661 et seq.

7 Aggregates levy was introduced by the Finance Act 2001 Pt II (ss 16-49).

8 See the Insolvency Act 1986 Sch 6 paras 3, 3A, 3B, 3C, 3D (Sch 6 para 3 amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 8; Insolvency Act 1986 Sch 6 para 3A added by the Finance Act 1994 s 64, Sch 7 para 7(2); Insolvency Act 1986 Sch 6 para 3B added by the Finance Act 1996 s 60, Sch 5 para 12(1); Insolvency Act 1986 Sch 6 para 3C added by the Finance Act 2000 s 30, Sch 7 para 3(1)(b), (2); Insolvency Act 1986 Sch 6 para 3D added by the Finance Act 2001 s 27, Sch 5 para 17(1)(b), (2)). See also note 2 supra. For the meaning of 'the relevant date' see para 764 note 3 ante. For these purposes, where the whole of the accounting period to which any value added tax, insurance premium tax, landfill tax, climate change levy or aggregates levy is attributable falls within the period of six months next before the relevant date, the whole amount of that tax or levy is referable to that six-month period; and in any other case the amount of any value added tax, insurance premium tax, landfill tax, climate change levy or aggregates levy which is referable to the period of six months next before the relevant date is the proportion of the tax or levy which is equal to such proportion, if any, of the accounting period (or accounting reference period in the case of value added tax) in question as falls within

such six-month period: Insolvency Act 1986 Sch 6 paras 3, 3A-3D (as so amended and added); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 3(2)(a), (3). In the case of value added tax, the accounting period is that prescribed by regulations under the Valued Added Tax Act 1994; and in the case of insurance premium tax, landfill tax, climate change levy and aggregates levy references to accounting periods are to be construed in accordance with the Finance Act 1994 Pt III (ss 48-74) (as amended) (insurance premium tax: see INSURANCE vol 25 (2003 Reissue) para 831 et seq), the Finance Act 1996 Pt III (ss 39-71) (as amended) (landfill tax: see LANDFILL TAX vol 61 (2010) PARA 901 et seq), the Finance Act 2000 Sch 6 (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) para 661 et seq) or the Finance Act 2001 Pt II (ss 16-49) (aggregates levy): see the Insolvency Act 1986 Sch 6 paras 3, 3A-3D (as so amended and added). See also note 2 supra.

9 Car Tax has been abolished: see the Car Tax (Abolition) Act 1992.

10 As to the excise duty on beer see CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) para 431 et seq.

11 As to general betting duty see LICENSING AND GAMBLING vol 68 (2008) PARA 748 et seq.

12 As to bingo duty see LICENSING AND GAMBLING vol 67 (2008) PARA 766 et seq.

13 As to gaming duty see LICENSING AND GAMBLING vol 68 (2008) PARA 759 et seq.

14 As to lottery duty see LICENSING AND GAMBLING vol 68 (2008) PARA 789 et seq.

15 Ie the debtor: Insolvency Act 1986 s 386(2).

16 See ibid Sch 6 paras 4, 5, 5A, 5B (Sch 6 para 5 amended by the Finance Act 1997 ss 13(2), 113, Sch 2 para 6, Sch 18 Pt II; Insolvency Act 1986 Sch 6 para 5A added by the Finance Act 1991 s 7(4), (5), Sch 2 para 22; Insolvency Act 1986 Sch 6 para 5B added by the Finance Act 1993 s 36(2)). See also note 2 supra. The amount due by way of general betting duty includes any amount which is due under the Betting and Gaming Duties Act 1981 s 12(1) (see LICENSING AND GAMBLING vol 68 (2008) PARAS 748, 754); Insolvency Act 1986 Sch 6 para 5 (as so amended).

17 As to air passenger duty see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 802 et seq.

18 See the Insolvency Act 1986 Sch 6 para 5C (added by the Finance Act 1994 s 40(2), Sch 6 para 13(1)). See also note 2 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/766. Social security contributions.

766. Social security contributions.

Sums due by way of contributions in respect of social security no longer constitute preferential debts, except in relation to insolvency proceedings initiated before 15 September 2003¹. In those circumstances, the following sums constitute preferential debts:

- 1142 (1) all sums which on the relevant date² were due from the company³ on account of Class 1 or Class 2 contributions⁴ and which became due from the company in the 12 months next before the relevant date⁵; and
- 1143 (2) all sums which on the relevant date have been assessed on and are due from the company on account of Class 4 contributions⁶, being sums which are due to the Commissioners of Inland Revenue⁷, rather than to the Secretary of State or a Northern Ireland department, and which are assessed on the company up to 5 April next before the relevant date, but not exceeding, in the whole, any one year's assessment⁸.

1 The Insolvency Act 1986 Sch 6 paras 6, 7 (as amended), which provided that social security contributions were preferential debts for the purposes of the Act, have been repealed subject to the proviso that they continue to have effect in relation to insolvency proceedings initiated before 15 September 2003 (ie in the circumstances described in para 763 note 1 ante): see the Enterprise Act 2002 ss 251(1)(c), 278(2), Sch 26; and the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 3(2)(a), (3).

2 For the meaning of 'the relevant date' see para 764 note 3 ante.

3 Ie the debtor: Insolvency Act 1986 s 386(2).

4 Ie under the Social Security Contributions and Benefits Act 1992 or the Social Security (Northern Ireland) Act 1975. As to Class 1 contributions see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) paras 34-37; and as to Class 2 contributions see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) paras 40-41.

5 See the Insolvency Act 1986 Sch 6 para 6 (amended by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 73). See also note 1 supra.

6 Ie under the Social Security Contributions and Benefits Act 1992 or the Social Security (Northern Ireland) Act 1975: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) paras 43-45.

7 As to the Commissioners of Inland Revenue see INCOME TAXATION vol 23(1) (Reissue) para 31 et seq.

8 See the Insolvency Act 1986 Sch 6 para 7; and note 1 supra. As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/767. Contributions to occupational pension schemes.

767. Contributions to occupational pension schemes.

Any sum which is owed by the company¹ and is a sum to which the statutory provisions relating to contributions to occupational pension schemes and state scheme premiums² apply constitutes a preferential debt³.

1 I.e. the debtor: Insolvency Act 1986 s 386(2).

2 I.e. to which the Pension Schemes Act 1993 s 128, Sch 4 (as amended) (occupational pension scheme contributions) applies: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 859.

3 Insolvency Act 1986 s 386(1), Sch 6 para 8 (s 386(1) amended by the Enterprise Act 2002 s 251(3), subject to the savings set out in para 763 note 1 ante); Insolvency Act 1986 Sch 6 para 8 amended by the Pension Schemes Act 1993 s 190, Sch 8 para 18). The Insolvency Act 1986 Sch 6 (as amended) is to be read with the Pension Schemes Act 1993 s 128, Sch 4 (as amended): Insolvency Act 1986 s 386(3) (amended by the Pension Schemes Act 1993 Sch 8 para 18). As to preferential debts generally see para 763 ante.

As to payment by the Secretary of State of unpaid contributions to occupational pension schemes upon the insolvency of the employer see the Pension Schemes Act 1993 Pt VII Ch II (ss 123-127) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 853 et seq. As to the Secretary of State see para 11 note 10 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/768. Levies on coal and steel production.

768. Levies on coal and steel production.

Any sums due at the relevant date¹ from the company² in respect of the levies on the production of coal and steel³ or any surcharge for delay⁴ constitute preferential debts⁵.

1 'The relevant date' is: (1) where the company is being wound up by the court and the winding-up order was made immediately upon the discharge of an administration order, the date on which the company entered administration; (2) if the winding up is by the court and the winding up order was made following conversion of administration into winding up by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 37, the date on which the company entered administration; (3) if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under art 37, the date on which the company entered administration; (4) if not a case falling within head (1), (2) or (3) supra, where the company is being wound up by the court and had not commenced to be wound up voluntarily before the date of the making of the winding-up order, the date of the appointment, or first appointment, of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order; (5) if not a case falling within head (1), (2), (3) or (4) supra and the company is being wound up following administration pursuant to the Insolvency Act 1986 Sch B1 para 83 (as added), the date on which the company entered administration; (6) if none of heads (1) to (5) supra applies, the relevant date is the date of the passing of the resolution for the winding up of the company: Insolvency Act 1986 s 387(1), (3) (s 387(3) amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 34(1), (3); and by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240). The amendment of these provisions does not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003: Insolvency Act 1986 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a). In this case, head (5) does not apply, and all references to the date on which the company entered administration are to be read as references to the date on which the administration order was made. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

In relation to a company which is in administration and to which no other provision of the Insolvency Act 1986 s 387 (as amended) applies, the relevant date is the date on which the company enters administration: Insolvency Act 1986 s 387(1), (3A) (s 387(3A) added by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 34(1), (4)). The addition of this provision does not apply in relation to special administration regimes or where a petition for an administration order has been presented before 15 September 2003: Insolvency Act 1986 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a).

2 Ie the debtor: Insolvency Act 1986 s 386(2).

3 Ie the levies referred to in the Treaty Establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461) ('the ECSC Treaty'), arts 49, 50.

4 Ie any surcharge for delay provided for in the ECSC Treaty art 50(3); ECSC High Authority Decision 3-52, art 6.

5 Insolvency Act 1986 s 386(1), Sch 6 para 15A (s 386(1) amended by the Enterprise Act 2002 s 251(3), subject to the savings set out in para 763 note 1 ante); Insolvency Act 1986 Sch 6 para 15A added by the Insolvency (ECSC Levy Debts) Regulations 1987, SI 1987/2093, reg 2(1)). As to preferential debts generally see para 763 ante. The Insolvency Act 1986 Sch 6 para 15A (as added) has effect in relation to a company whether the relevant date is a date falling before or after 1 January 1988, but does not affect any declaration or payment of a dividend made before that date: Insolvency (ECSC Levy Debts) Regulations 1987, SI 1987/2093, reg 2(3). Where the payment of preferential debts falls to be regulated by the law in force at any time before 29 December 1986, there must be treated as included among those debts any sums due from the company at the relevant date in respect of such levies or any such surcharge for delay: reg 4(1). In this provision, 'the relevant date' means the date by reference to which the company's preferential debts fall to be ascertained in accordance with the law referred to in reg 4(1): reg 4(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

768 Levies on coal and steel production

NOTES 3, 4--By virtue of art 97, the ECSC Treaty has now expired. Since 24 July 2002, the sectors previously covered by this Treaty, and the procedural rules and other secondary legislation derived from it, have been subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty.

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769. Remuneration etc of employees.

The following sums due to employees constitute preferential debts¹:

- 1144 (1) so much of any amount which is owed by the company² to a person who is or has been an employee of the company and is payable by way of remuneration in respect of the whole or any part of the period of four months next before the relevant date³, to the extent that it does not exceed so much as may be prescribed by order made by the Secretary of State⁴;
- 1145 (2) an amount owed by way of accrued holiday remuneration⁵, in respect of any period of employment before the relevant date, to a person whose employment by the company has been terminated, whether before, on or after that date⁶;
- 1146 (3) so much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within either of head (1) or (2) above⁷;
- 1147 (4) so much of any amount as does not exceed such amount as may be prescribed by order made by the Secretary of State⁸ which is ordered, whether before or after the relevant date, to be paid by the company in respect of service with the reserve forces⁹, and is so ordered in respect of a default made by the company before that date in the discharge of its statutory obligations in that regard¹⁰.

1 As to preferential debts generally see para 763 ante.

2 Ie the debtor: Insolvency Act 1986 s 386(2).

3 For the meaning of 'the relevant date' see para 768 note 1 ante. A sum is payable by the company to a person by way of remuneration in respect of any period if: (1) it is paid as wages or salary, whether payable for time or for piece work or earned wholly or partly by way of commission, in respect of services rendered to the company in that period (Insolvency Act 1986 Sch 6 para 13(1)(a)); or (2) it is an amount payable by the company in respect of that period and constitutes either a guarantee payment under the Employment Rights Act 1996 Pt III (ss 28-35) (as amended) (employee without work to do: see EMPLOYMENT vol 39 (2009) PARA 237 et seq), any payment for time off under s 53 (as amended) (looking for work etc: see EMPLOYMENT vol 39 (2009) PARA 303), s 56 (as amended) (ante-natal care: see EMPLOYMENT vol 39 (2009) PARA 307), or the Trade Union and Labour Relations (Consolidation) Act 1992 s 169 (as amended) (trade union duties: see EMPLOYMENT vol 40 (2009) PARA 1014), any remuneration on suspension on medical grounds or on maternity grounds under the Employment Rights Act 1996 Pt VII (ss 64-70) (as amended) (see EMPLOYMENT vol 39 (2009) PARA 316 et seq), or remuneration under a protective award made by an employment tribunal under the Trade Union and Labour Relations (Consolidation) Act 1992 s 189 (as amended) (see EMPLOYMENT vol 41 (2009) PARA 1155): Insolvency Act 1986 Sch 6 para 13(1)(b), (2) (Sch 6 para 13(2) substituted by the Employment Rights Act 1996 s 240, Sch 1 para 29). As to the rights of an employee on the insolvency of his employer to obtain payments from the Secretary of State see the Pension Schemes Act 1993 Pt VII Ch II (ss 123-127) (as amended); the Employment Rights Act 1996 Pt XII (ss 182-190) (as amended); and EMPLOYMENT vol 39 (2009) PARA 557 et seq; SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 853 et seq.

Without prejudice to these provisions, any remuneration payable by the company to a person in respect of absence from work through sickness or other good cause is deemed to be wages or, as the case may be, salary in respect of services rendered to the company in that period: Insolvency Act 1986 Sch 6 para 15(a).

4 Ibid s 386(1), Sch 6 para 9 (s 386(1) amended by the Enterprise Act 2002 s 251(3), subject to the savings set out in para 763 note 1 ante). Orders made under the Insolvency Act 1986 Sch 6 para 9 or Sch 6 para 12 (see the text and notes 8-10 infra) may contain such transitional provisions as may appear to the Secretary of State necessary or expedient and must be made by statutory instrument subject to annulment in pursuance of a

resolution of either House of Parliament: Sch 6 para 16. The amount prescribed for the purposes of Sch 6 paras 9, 12 is £800: Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996, art 4. As to the Secretary of State see para 11 note 10 ante.

5 In a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of that person's contract of employment or of any enactment or of an order or direction made under an enactment, that remuneration would have accrued in respect of that period if that person's employment had continued until he became entitled to be allowed the holiday: Insolvency Act 1986 Sch 6 para 14. For the meaning of 'go into liquidation' see para 9 note 3 ante. This provision also applies in a case in which a person's employment has been terminated, where his employer is a company not in liquidation, by or in consequence of: (1) a receiver being appointed as mentioned in s 40 (debenture holders secured by a floating charge: see COMPANIES vol 15 (2009) PARA 1334); (2) the appointment of a receiver under s 53(6) or s 54(5) (Scottish company with property subject to a floating charge); or (3) the taking of possession by debenture holders (so secured) as mentioned in the Companies Act 1985 s 196 (see COMPANIES vol 15 (2009) PARA 1334): Insolvency Act 1986 Sch 6 para 14(1)(a)-(c).

Without prejudice to these provisions, any remuneration payable by the company to a person in respect of a period of holiday is deemed to be wages or, as the case may be, salary in respect of services rendered to the company in that period; and, for these purposes, references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period: Sch 6 para 15. As to the enactments relating to social security see SOCIAL SECURITY AND PENSIONS.

6 Ibid Sch 6 para 10.

7 Ibid Sch 6 para 11. Whether a wages cheque drawn by a company on an overdrawn account is regarded as paid out of money advanced for the purpose depends upon the way in which the account is kept: see *Re Primrose (Builders) Ltd* [1950] Ch 561, [1950] 2 All ER 334 (where payments credited to an account were not regarded as appropriated to sums advanced by a bank for wages); *Re EJ Morel (1934) Ltd* [1962] Ch 21, [1961] 1 All ER 796 (current account and wages account interdependent; contrary result). See also *Re Rampgill Mill Ltd* [1967] Ch 1138, [1967] 1 All ER 56 (no wages account; lending bank arranged for another bank to cash company's cheques, principally for wages; money held to have been advanced for wages).

8 As to this amount see the text and note 4 supra.

9 Ie paid under the Reserve Forces (Safeguard of Employment) Act 1985: see ARMED FORCES vol 2(2) (Reissue) para 92.

10 Insolvency Act 1986 Sch 6 para 12.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

769 Remuneration etc of employees

NOTE 5--1986 Act Sch 6 para 14(1)(c) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

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770. Subrogation of guarantor.

Where a guarantor makes any payment on account of a preferential debt¹, he is entitled to assert the same right of priority as the creditor had in respect of the amount so paid².

¹ See para 763 et seq ante.

² *Re Lamplugh Iron Ore Co Ltd* [1927] 1 Ch 308 (rates). As to the rights of a person advancing sums for the purpose of paying remuneration to employees see para 769 text and note 7 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/771. Payment of preferential debts.

771. Payment of preferential debts.

Preferential debts¹ rank equally among themselves after the expenses of the winding up² and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions³.

1 As to what are preferential debts see para 763 et seq ante.

2 As to the priority of expenses of the winding up see para 810 post.

3 Insolvency Act 1986 s 175(2)(a); *Re Glyncoffwg Colliery Co Ltd* [1926] Ch 951. As to the mode of proof of preferential claims see para 774 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/772. Priority of secured debts.

772. Priority of secured debts.

Preferential debts¹ have no preference or priority over the claims of secured creditors in relation to their securities², except that, so far as the assets of the company available for payment of general creditors are insufficient to meet preferential debts, they have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company³, and must be paid accordingly out of any property comprised in or subject to that charge⁴.

Where, in the case of a company which is being wound up by the court in England and Wales, and without prejudice to the provisions relating to the avoidance of attachments and distress⁵, any person, whether or not a landlord or person entitled to rent, has distrained upon the goods or effects of the company in the period of three months ending with the date of the winding-up order, those goods or effects, or the proceeds of their sale, are charged for the benefit of the company with the preferential debts of the company to the extent that the property of the company is for the time being insufficient for meeting them⁶. Where, by virtue of any such charge, any person surrenders any goods or effects to a company or makes a payment to a company, then, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator of the company, or, as the case may be, the amount of the payment, that person ranks as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment⁷.

1 As to what are preferential debts see para 763 et seq ante.

2 *Richards v Kidderminster Overseers, Richards v Kidderminster Corpn* [1896] 2 Ch 212. As to the claims of secured creditors see paras 797, 798 post.

3 As to floating charges see COMPANIES vol 15 (2009) PARA 1337. Cf *Re Brightlife Ltd* [1987] Ch 200, [1986] 3 All ER 673; *Re Portbase Clothing Ltd* [1993] Ch 388, [1993] 3 All ER 829 (although note that the part of the decision to the effect that the expenses of the winding up are payable out of the proceeds of realisation of property subject to a charge which as created was a floating charge in priority to the claims of the preferential creditors is incorrect and has been implicitly overruled by *Buchler v Talbot* [2004] UKHL 9, [2004] 1 All ER 1289, [2004] 2 WLR 582: see para 810 post).

4 Insolvency Act 1986 s 175(2)(b). As to the position where receivers are appointed see s 40; and COMPANIES vol 15 (2009) PARA 1337.

5 I.e the provisions contained in the Insolvency Act 1986 s 128: see para 888 post.

6 Ibid s 176(1), (2). See *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267. These provisions are expressly limited to a company ordered to be wound up by the court and do not apply to a voluntary winding up: *Herbert Berry Associates Ltd v IRC* [1978] 1 All ER 161, [1977] 1 WLR 1437, HL; and see further para 1014 post.

7 Insolvency Act 1986 s 176(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

772 Priority of secured debts

NOTE 3--However, see now the Insolvency Act 1986 s 176ZA (added by the Companies Act 2006 s 1282(1)) under which property subject to a floating charge may, where necessary, be used to fund the general expenses of winding up in priority to the floating charge holder and to any preferential creditors to be paid out of that property.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/773. Share of assets for unsecured creditors.

773. Share of assets for unsecured creditors.

Where a floating charge¹ relates to property of a company which has gone into liquidation, which is in administration, of which there is a provisional liquidator or of which there is a receiver, the liquidator, administrator or receiver, as the case may be, must make a prescribed² part of the company's net property³ available for the satisfaction of unsecured debts⁴ and must not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts⁵.

These provisions do not apply to a company:

- 1148 (1) if the company's property is less than the prescribed minimum⁶ and the liquidator, receiver or administrator, as the case may be, thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits⁷;
- 1149 (2) if and in so far as they are disapplied by a voluntary arrangement⁸ in respect of the company⁹ or a compromise or arrangement¹⁰ agreed with creditors and members¹¹; or
- 1150 (3) if the liquidator, administrator or receiver applies to the court¹² for an order on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits¹³ and the court orders that the provisions do not apply¹⁴.

The costs associated with the prescribed part must be paid out of the prescribed part¹⁵.

1 For these purposes, 'floating charge' means a charge which is a floating charge on its creation and which is created after the first order under the Insolvency Act 1986 s 176A(2)(a) (as added) (see the text and notes 2-4 infra) comes into force: s 176A(9) (s 176A added by the Enterprise Act 2002 s 252). The Insolvency Act 1986 s 176A has effect from 15 September 2003 (see the Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 2(1), Sch 1.

2 'Prescribed' means prescribed by order of the Secretary of State: Insolvency Act 1986 s 176A(9) (as added: see note 1 supra). Such an order must be made by statutory instrument and must be subject to annulment pursuant to a resolution of either House of Parliament (s 176A(8) (as so added)) and may include transitional or incidental provision (s 176A(9) (as so added)). An order prescribing part of a company's net property may, in particular, provide for its calculation as a percentage of the company's net property or as an aggregate of different percentages of different parts of the company's net property: s 176A(7) (as so added). As to the effect of the orders made under these provisions see notes 4, 6 infra. As to the Secretary of State see para 11 note 10 ante.

3 For these purposes, a company's net property is the amount of its property which would, but for ibid s 176A (as added), be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company: s 176A(6) (as added: see note 1 supra).

4 Ibid s 176A(2)(a) (as added: see note 1 supra). The prescribed part of the company's net property to be made available for the satisfaction of unsecured debts of the company pursuant to ibid s 176A (as added) must be calculated as follows: (1) where the company's net property does not exceed £10,000 in value, 50% of that property; (2) where the company's net property exceeds £10,000 in value, the sum of 50% of the first £10,000 in value and 20% of that part of the company's net property which exceeds £10,000 in value (subject to a maximum of £600,000): Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097, art 3. As to the making of orders see note 2 supra.

- 5 Insolvency Act 1986 s 176A(2)(b) (as added: see note 1 supra).
- 6 Ibid s 176A(3)(a) (as added: see note 1 supra). The minimum value of the company's net property is £10,000: Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097, art 2.
- 7 Insolvency Act 1986 s 176A(3)(b) (as added: see note 1 supra).
- 8 Ie an arrangement approved in relation to the company under ibid Pt I (ss 1-7B) (as amended): see para 71 et seq ante.
- 9 Ibid s 176A(4)(a) (as added: see note 1 supra).
- 10 Ie under the Companies Act 1985 s 425 (as amended).
- 11 Insolvency Act 1986 s 176A(4)(b) (as added: see note 1 supra).
- 12 As to the making of applications see para 1055 et seq post.
- 13 Insolvency Act 1986 s 176A(5)(a) (as added: see note 1 supra).
- 14 Ibid s 176A(5)(b) (as added: see note 1 supra).
- 15 Insolvency Rules 1986, SI 1986/1925, r 12.2(2) (added by SI 2003/1730). See para 810 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

773 Share of assets for unsecured creditors

TEXT AND NOTES--See the Insolvency Act 1986 s 176ZA (added by the Companies Act 2006 s 1282(1)) under which property subject to a floating charge may, where necessary, be used to fund the general expenses of winding up in priority to the floating charge holder and to any preferential creditors to be paid out of that property.

NOTE 10--Now under the Companies Act 2006 Pt 26 (ss 895-901): 1986 Act s 176A(4)(b) (amended by SI 2008/948).

NOTES 13, 14--The court cannot make an order under the Insolvency Act 1986 s 176A(5) so as to deprive some unsecured creditors of their entitlement to a distribution but not others: *Re Courts plc (in liquidation)* [2008] EWHC 2339 (Ch), [2009] 2 All ER 402. See also *Re International Sections Ltd (in creditors' voluntary liquidation)* [2009] EWHC 137 (Ch), [2009] 1 BCLC 580.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(ii) Priority of Debts/774. Proof of preferential claims.

774. Proof of preferential claims.

The rules relating to the admission and rejection of proofs of debt apply with certain exceptions to the admission and rejection of preferential claims¹.

¹ See para 775 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/775. Meaning of 'prove'.

(iii) Procedure for Proving

775. Meaning of 'prove'.

Where a company is being wound up by the court, a person claiming to be a creditor of the company and wishing to recover his debt¹ in whole or in part must² submit his claim in writing to the liquidator³. A creditor who claims, whether or not in writing, is referred to as 'proving' for his debt; and a document by which he seeks to establish his claim is his 'proof'⁴.

A proof must be in the form known as 'proof of debt', whether the form prescribed or a substantially similar form, which must be made out by or under the directions of the creditor, and signed by him or a person authorised in that behalf⁵. Where a debt is due to a Minister of the Crown or a government department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances⁶.

In certain circumstances⁷ the proof must be in the form of an affidavit⁸.

Where a winding up is immediately preceded by an administration, a creditor proving in the administration shall be deemed to have proved in the winding up⁹.

1 For the meaning of 'debt' see para 749 ante.

2 The subject to any order of the court under the Insolvency Rules 1986, SI 1986/1925, r 4.67(2): see para 668 ante. For a case where proof was dispensed with under the former provisions see *Re Theo Garvin Ltd* [1969] 1 Ch 624, [1967] 3 All ER 497 (claims for interest on money accepted as deposit). A past or present director, manager or other officer who knows or believes that a false debt has been proved by any person and fails to inform the liquidator as soon as practicable is guilty of an offence: see the Insolvency Act 1986 ss 208(1)(d), (5), 430, Sch 10; and para 906 post.

3 Insolvency Rules 1986, SI 1986/1925, r 4.73(1).

4 Ibid r 4.73(3).

5 Ibid r 4.73(4). As to the prescribed form of proof of debt see rr 4.73, 12.7, Sch 4 Form 4.25.

6 Ibid r 4.73(5).

7 See para 779 post.

8 Insolvency Rules 1986, SI 1986/1925, r 4.73(7).

9 Ibid r 4.73(8) (added by SI 2003/1730).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

775 Meaning of 'prove'

TEXT AND NOTES 7, 8--SI 1986/1925 r 4.73(7) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/776. Limitation of time for proving.

776. Limitation of time for proving.

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved¹. This power may be delegated to the liquidator². Even though the time appointed for his bringing in his claim has long elapsed, a creditor is invariably allowed to prove whenever there are funds in court or otherwise available, subject to such terms as the court thinks fit as to costs and as to not disturbing dividends already paid³.

1 Insolvency Act 1986 s 153. 'Distribution' includes a distribution to contributories: *Butler v Broadhead* [1975] Ch 97, [1974] 2 All ER 401; and see *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668.

2 See the Insolvency Act 1986 s 160(1)(e); and para 588 ante. As to declarations of dividends and limitation of time for proving see para 815 et seq post.

3 *Harrison v Kirk* [1904] AC 1, HL; *Re McMurdo, Penfield v McMurdo* [1902] 2 Ch 684, CA; *Re General Rolling Stock Co, Joint Stock Discount Co's Claim* (1872) 7 Ch App 646; *Re Kit Hill Tunnel, ex p Williams* (1881) 16 ChD 590.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/777. Supply of forms.

777. Supply of forms.

A form of proof must be sent to any creditor of the company by the liquidator where the creditor so requests.¹.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.74 (substituted by SI 2004/584).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/778. Contents of proof.

778. Contents of proof.

The following matters must be stated in a creditor's proof of debt¹:

- 1151 (1) the creditor's name and address and, if a company, its company registration number²;
- 1152 (2) the total amount of his claim, including any value added tax, as at the date on which the company went into liquidation³;
- 1153 (3) whether or not that amount includes outstanding uncapitalised interest⁴;
- 1154 (4) particulars of how and when the debt was incurred by the company⁵;
- 1155 (5) particulars of any security held, the date when it was given and the value which the creditor puts upon it⁶;
- 1156 (6) details of any reservation of title in respect of goods to which the debt refers⁷; and
- 1157 (7) the name, address and authority of the person signing the proof, if other than the creditor himself⁸.

There must be specified in the proof any documents by reference to which the debt can be substantiated; but, subject to the following provision, it is not essential that such documents be attached to the proof or submitted with it⁹.

The liquidator, or the chairman or convener of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof¹⁰.

1 The Insolvency Rules 1986, SI 1986/1925, r 4.75 (as amended) is subject to r 4.73(5) (debts due to a Minister of the Crown or a government department: see para 775 ante); r 4.75(1) (substituted by SI 2004/584). As to the prescribed form of proof of debt see the Insolvency Rules 1986, SI 1986/1925, rr 4.75, 12.7, Sch 4 Form 4.25.

2 Ibid r 4.75(1)(a) (as substituted: see note 1 supra).

3 Ibid r 4.75(1)(b) (as substituted: see note 1 supra). For the meaning of 'go into liquidation' see para 9 note 3 ante.

4 Ibid r 4.75(1)(c) (as substituted: see note 1 supra). As to the provisions relating to interest on debts see para 827 post.

5 Ibid r 4.75(1)(d) (as substituted: see note 1 supra).

6 Ibid r 4.75(1)(e) (as substituted: see note 1 supra). As to secured creditors see para 797 et seq post.

7 Ibid r 4.75(1)(f) (as substituted: see note 1 supra).

8 Ibid r 4.75(1)(g) (as substituted: see note 1 supra).

9 Ibid r 4.75(2).

10 Ibid r 4.75(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/779. Claim established by affidavit.

779. Claim established by affidavit.

If he thinks it necessary, the liquidator may require a claim of debt to be verified by means of an affidavit, for which purpose there must be used the form known as 'affidavit of debt', or a substantially similar form¹; and an affidavit may be required notwithstanding that a proof of debt has already been lodged². The affidavit may be sworn before an official receiver or deputy official receiver, or before an officer of the Department of Trade and Industry or of the court duly authorised in that behalf³.

1 Insolvency Rules 1986, SI 1986/1925, r 4.77(1). As to the prescribed form of affidavit of debt see rr 4.77, 12.7, Sch 4 Form 4.26.

2 Ibid r 4.77(2).

3 Ibid r 4.77(3). As to the official receiver see para 503 et seq ante. As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

779 Claim established by affidavit

TEXT AND NOTES--SI 1986/1925 r 4.77, Sch 4 Form 4.26 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/780. Cost of proving.

780. Cost of proving.

Every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence¹ substantiating the claim made in the proof²; and costs incurred by the liquidator in estimating the quantum of a debt not bearing a certain value³ are payable out of the assets, as an expense of the liquidation⁴. These provisions apply unless the court otherwise orders⁵.

1 As to providing such documents as evidence see para 778 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.78(1).

3 *Ie* under *ibid* r 4.86: see para 789 post.

4 *Ibid* r 4.78(2). As to the prescribed order of priority of expenses of the winding up see para 810 et seq post.

5 *Ibid* r 4.78(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

780 Cost of proving

TEXT AND NOTES 3, 4--SI 1986/1925 r 4.78(2) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/781. Liquidator to allow inspection of proofs.

781. Liquidator to allow inspection of proofs.

The liquidator must, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day¹, by any of the following persons:

- 1158 (1) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise)²;
- 1159 (2) any contributory³ of the company⁴;
- 1160 (3) any person acting on behalf of either of the above⁵.

1 For the meaning of 'business day' see para 113 note 4 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.79(a). As to rejection of proofs for purposes of dividend see para 783 post.

3 For the meaning of 'contributory' see para 703 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.79(b).

5 Ibid r 4.79(c).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/782. Transmission of proofs to liquidator.

782. Transmission of proofs to liquidator.

Where a liquidator is appointed, the official receiver must forthwith transmit to him all the proofs which he has so far received, together with an itemised list of them¹. The liquidator must sign the list by way of receipt for the proofs, and return it to the official receiver². From then on, all proofs of debt must be sent to the liquidator, and retained by him³.

If a new liquidator is appointed in place of another, the former liquidator must transmit to him all proofs which he has received, together with an itemised list of them⁴. The new liquidator must sign the list by way of receipt for the proofs, and return it to his predecessor⁵.

1 Insolvent Rules 1986, SI 1986/1925, r 4.80(1). As to the official receiver see para 503 et seq ante.

2 Ibid r 4.80(2).

3 Ibid r 4.80(3).

4 Ibid r 4.81(1).

5 Ibid r 4.81(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

782 Transmission of proofs to liquidator

NOTE 5--SI 1986/1925 r 4.81(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/783. Admission and rejection of proofs for dividend.

783. Admission and rejection of proofs for dividend.

A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount¹. If the liquidator rejects a proof in whole or in part, he must prepare a written statement of his reasons for doing so, and send it forthwith to the creditor².

¹ Insolvency Rules 1986, SI 1986/1925, r 4.82(1).

² Ibid r 4.82(2). The liquidator has to examine every proof lodged with him and the grounds of the debt, even though the proof is based on a judgment, a covenant or an account stated: *Re Home and Colonial Insurance Co Ltd* [1930] 1 Ch 102, applying the principles laid down in *Re Van Laun, ex p Chatterton* [1907] 2 KB 23, CA (a bankruptcy case); *Re Menastar Finance Ltd (in liquidation), Menastar Ltd v Simon* [2002] EWHC 2610 (Ch), [2003] 1 BCLC 338. In examining a proof he also has to examine a set-off, if it is a matter of account, to determine the amount to be admitted: *Re National Wholemeal Bread and Biscuit Co* [1892] 2 Ch 457. The liquidator, in deciding whether to accept or reject a creditor's proof in whole or in part, acts in a quasi-judicial capacity: *Re Menastar Finance Ltd (in liquidation), Menastar Ltd v Simon* supra. Claims of creditors must be valued according to their true value without regard to any estoppel arising between the company and a creditor before the company went into liquidation: *Re Exchange Securities and Commodities Ltd* [1988] Ch 46, [1987] 2 All ER 272. As to appeals against the liquidator's decision see para 786 post. Save in cases of clear necessity, an order for examination or production of documents under the Insolvency Act 1986 s 236 (see para 679 ante) should not be made for the purpose of providing further information to a liquidator to allow him to admit or reject a proof of debt: *Bellmex International Ltd (in liquidation) v British American Tobacco Ltd* [2001] 1 BCLC 91.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/784. Proof for income tax.

784. Proof for income tax.

It is not competent for a liquidator to reject a proof for tax on grounds that the company is entitled to relief under one of the relief provisions of the taxing Act¹; such a claim must be made to the appropriate revenue authority².

¹ As to reliefs in respect of income taxation see INCOME TAXATION.

² *Re Ayr Picture Houses Ltd* (1928) 13 TC 675, Ct of Sess; and see *Re Calvert* [1899] 2 QB 145 (bankruptcy proof cannot be expunged on ground that debtor has made no profit).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/785. Assignee of debt after proof.

785. Assignee of debt after proof.

Where a debt is assigned after proof has been made for it but before it has been admitted, the court will permit the assignee to prove in substitution for the assignor notwithstanding that there may be equities between him and the assignor¹.

¹ *Re Globe Trust Ltd* [1916] WN 100.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/786. Appeal against decision on proof.

786. Appeal against decision on proof.

If a creditor is dissatisfied with the liquidator's decision with respect to his proof, including any decision on the question of preference¹, he may apply to the court for the decision to be reversed or varied; and the application² must be made within 21 days of his receiving the statement of reasons³ for rejecting the proof⁴. A contributory or any other creditor may, if dissatisfied with the liquidator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the liquidator's decision⁵.

Where any such application is made to the court, the court must fix a venue⁶ for the application to be heard, notice of which must be sent by the applicant to the creditor who lodged the proof in question, if not himself the applicant, and to the liquidator⁷. The liquidator must, on receipt of the notice, file in court⁸ the relevant proof, together, if appropriate, with a copy of the statement of reasons rejecting the proof⁹. After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the court to the liquidator¹⁰. The official receiver is not personally liable for costs incurred by any person in respect of any such application; and the liquidator, if other than the official receiver, is not so liable unless the court makes an order to that effect¹¹.

1 As to preferential creditors see para 825 et seq post.

2 As to the making of applications see para 1055 et seq post.

3 As to the requirement that the liquidator send a statement of reasons for rejecting the proof see para 783 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.83(1).

5 Ibid r 4.83(2). For the meaning of 'contributory' see para 703 ante.

6 For the meaning of 'venue' see para 91 note 7 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 4.83(3).

8 For the meaning of 'file in court' see para 129 note 3 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 4.83(4). The court will decide on the merits on the evidence before it; its function is not that of deciding merely whether the rejection was right or wrong on the evidence available to the liquidator: *Re Kentwood Construction Ltd* [1960] 2 All ER 655n, [1960] 1 WLR 646; *Re Trepca Mines Ltd* [1960] 3 All ER 304n, [1960] 1 WLR 1273, CA.

10 Insolvency Rules 1986, SI 1986/1925, r 4.83(5).

11 Ibid r 4.83(6). As to the official receiver see para 503 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

786 Appeal against decision on proof

NOTE 9--SI 1986/1925 r 4.83(4A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/787. Withdrawal or variation of proof.

787. Withdrawal or variation of proof.

A creditor's proof may at any time, by agreement between himself and the liquidator, be withdrawn or varied as to the amount claimed¹.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.84.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iii) Procedure for Proving/788. Expunging of proof by the court.

788. Expunging of proof by the court.

The court may¹ expunge a proof or reduce the amount claimed:

- 1161 (1) on the liquidator's application², where he thinks that the proof has been improperly³ admitted, or ought to be reduced⁴; or
- 1162 (2) on the application of a creditor, if the liquidator declines to interfere in the matter⁵.

Where any such application is made to the court, the court must fix a venue⁶ for the application to be heard, notice of which must be sent by the applicant:

- 1163 (a) in the case of an application by the liquidator, to the creditor who made the proof⁷; and
- 1164 (b) in the case of an application by a creditor, to the liquidator and to the creditor who made the proof, if not himself⁸.

Mere lapse of time does not bar the court's right to expunge or reduce a proof⁹. If a proof is expunged or reduced, a creditor may retain any dividend previously received¹⁰; but he is not entitled to receive any further dividend without giving credit for the overpayment in respect of his original proof⁶.

1 The court has a discretion as to whether or not to expunge or reduce a proof, even if the court has found that the proof was improperly admitted: *Re Globe Legal Services Ltd* [2002] BCC 858.

2 As to the making of applications see para 1055 et seq post.

3 'Improperly' implies no sense of impropriety, and means merely 'wrongly': *Re Allard Holdings Ltd* [2001] 1 BCLC 404; *Re Globe Legal Services Ltd* [2002] BCC 858. The burden of proof, on the balance of probabilities, lies on the liquidator: *Re Allard Holdings Ltd* supra.

4 Insolvency Rules 1986, SI 1986/1925, r 4.85(1)(a).

5 Ibid r 4.85(1)(b).

6 For the meaning of 'venue' see para 91 note 7 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 4.85(2)(a).

8 Ibid r 4.85(2)(b).

9 *Re Tait, ex p Harper* (1882) 21 ChD 537, CA. Lapse of time might contribute to the applicant being estopped from seeking to expunge a proof: *Re Allard Holdings Ltd* [2001] 1 BCLC 404.

10 *Re Searle, Hoare & Co* [1924] 2 Ch 325 (a bankruptcy case).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/789. Estimate of quantum.

(iv) Quantification of Claim

789. Estimate of quantum.

The liquidator must estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit, by reference to any change of circumstances or to information becoming available to him¹. He must inform the creditor as to his estimate and any revision of it². Where the value of a debt is so estimated by the liquidator, or by the court³, the amount provable in the winding up in the case of that debt is that of the estimate for the time being⁴.

1 Insolventcy Rules 1986, SI 1986/1925, r 4.86(1). Under the Bankruptcy Act 1914 s 30 (repealed), which applied to the winding up of insolvent companies by virtue of the Companies Act 1948 s 317 (repealed), claims contingent when the winding up commenced but ascertained during the winding up were admitted to proof for the ascertained amount, but not so as to disturb previous dividends: *Re Northern Counties of England Fire Insurance Co, MacFarlane's Claim* (1880) 17 ChD 337; cf *Re Bridges, Hill v Bridges* (1881) 17 ChD 342 (a case of administration); *Holdich's Case* (1872) LR 14 Eq 72 at 80. The principle that regard is to be had to events which have occurred since the date of the winding up in valuing claims is pervasive in the valuation of claims in winding up, and has been termed 'the hindsight principle': *MS Fashions Ltd v Bank of Credit and Commerce International SA (in liquidation) (No 2)* [1993] Ch 425 at 432-433, [1993] 3 All ER 769 at 775-776 per Hoffmann LJ; *Transit Casualty Co v Policyholders Protection Board* [1992] 2 Lloyd's Rep 358n. As to the costs incurred by the liquidator in estimating the quantum see para 780 ante.

2 Insolventcy Rules 1986, SI 1986/1925, r 4.86(1).

3 Ie under the Insolventcy Act 1986 s 168(3) or s 168(5): see para 572 ante.

4 Insolventcy Rules 1986, SI 1986/1925, r 4.86(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/790. Negotiable instruments etc.

790. Negotiable instruments etc.

Unless the liquidator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy¹.

A person holding acceptances of the company may prove in its winding up, but only for the amount actually due to him; if he has received anything from other parties, he may prove in the winding up only for the balance², even though the part payment was made after the winding up commenced³.

1 Insolvent Rules 1986, SI 1986/1925, r 4.87.

2 *Re Oriental Commercial Bank, ex p Maxoudoff* (1868) LR 6 Eq 582. With regard to securities for payment of such acceptances, the rule in *Re Brickwood, ex p Waring, Re Bracken, ex p Inglis* (1815) 19 Ves 345 obtains in England (*Hickie & Co's Case* (1867) LR 4 Eq 226; *Re Barning's Banking Co, Leech's Claim* (1871) 6 Ch App 388; *Re Barning's Banking Co, ex p Joint Stock Discount Co* (1875) 10 Ch App 198), but not in Scotland (*Royal Bank of Scotland v Commercial Bank of Scotland* (1882) 7 App Cas 366, HL). As to the rule in *Re Brickwood, ex p Waring, Re Bracken, ex p Inglis* supra see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 431-433.

3 *Re Oriental Commercial Bank, ex p Maxoudoff* (1868) LR 6 Eq 582.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/791. Trade and other discounts.

791. Trade and other discounts.

There must in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement¹.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.89.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/792. Mutual credit and set-off.

792. Mutual credit and set-off.

Where, before the company goes into liquidation¹, there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation², an account must be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party must be set off against the sums due from the other³. In taking this account, sums due from the company to another party must not be taken into account if that other party had notice at the time they became due that a meeting of creditors had been summoned⁴ or, as the case may be, a petition for the winding up of the company was pending⁵; nor if the liquidation was immediately preceded by an administration and the sums became due during the administration⁶; nor if the liquidation was immediately preceded by an administration and the other party had notice at the time that the sums became due that an application for an administration order was pending, or any person had given notice of intention to appoint an administrator⁷. Only the balance, if any, of the account is provable in the liquidation; alternatively as the case may be, the amount must be paid to the liquidator as part of the assets⁸.

In the winding up of a company entitled to set off a claim against a preferential creditor⁹ to which it also owes non-preferential debts, the company's claim must be set off against the creditor's claims rateably in proportion to the amounts of the preferential and non-preferential claims of the creditor¹⁰.

The right of set-off is subject to the rules against double proof, and is not available in favour of a surety when the principal creditor's right of proof in respect of the debt guaranteed is still subsisting¹¹.

The right of set-off and the obligation to set off cannot be excluded by contract¹².

Any net balance owing to the insolvent estate upon the taking of the account is capable of assignment¹³.

1 For the meaning of 'go into liquidation' see para 9 note 3 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.90(1). Set-off in insolvency must be distinguished from set-off between two solvent parties: see *Hanak v Green* [1958] 2 QB 9, [1958] 2 All ER 141, CA; *Handley Page Ltd v Customs and Excise Comrs and Rockwell Machine Tool Co Ltd* [1970] 2 Lloyd's Rep 459 (affd [1971] 2 Lloyd's Rep 298, CA).

3 Insolvency Rules 1986, SI 1986/1925, r 4.90(2). Under the Companies Act 1948 s 317 (repealed), which applied the mutual credit provisions in bankruptcy (now repealed) in the case of an insolvent company for the purposes of set-off, the winding up fixed the rights of the parties: *Re Milan Tramways Co, ex p Theys* (1884) 25 ChD 587 at 591, CA; *Sankey Brook Coal Co Ltd v Marsh* (1871) LR 6 Exch 185; *Re United Ports and General Insurance Co, ex p Etna Insurance Co* (1877) 46 LJ Ch 403; cf *Re Eros Films Ltd* [1963] Ch 565, [1963] 1 All ER 383. Thus a person could not set off a sum due to him when the company was wound up against a sum which the court had in the winding up ordered to be repaid by him on the grounds that it had been paid to him before the winding up as a preference (see para 846 et seq post) (*Re a Debtor (No 82 of 1926)* [1927] 1 Ch 410; *Re BP Fowler Ltd* [1938] Ch 113, [1937] 3 All ER 781); and a person having claims against the company prior to the winding up could not set off those claims against any sum ordered to be paid by him in misfeasance proceedings (*Re Anglo-French Co-operative Society, ex p Pelly* (1882) 21 ChD 492, CA; *Flitcroft's Case* (1882) 21 ChD 519; *Re Carriage Co-operative Supply Association* (1884) 27 ChD 322; *Re Etic Ltd* [1928] Ch 861). The position is the same under the Insolvency Rules 1986, SI 1986/1925, r 4.90 (as amended) (see *Manson v Smith (Liquidator of Thomas Christy Ltd)* [1997] 2 BCLC 161, CA; *Smith (Administrator of Cosslett (Contractors) Ltd) v Bridgend County Borough Council* [2001] UKHL 58 at [35], [2002] 1 AC 336 at [35] per Lord Hoffmann); and it

has been held that no set-off is available where the debt on which the company sues is a loan granted to a director in breach of the Companies Act 1985 s 330 (see *Re a Company (No 1641 of 2003)* [2003] EWHC 2652 (Ch), [2004] 1 BCLC 210). A contributory could not set off a debt due to him against a claim made in the winding up, unless he was a bankrupt: see para 739 ante. There was no right of set-off where the claim on one side was for the return of goods in specie: *Re Robinson, ex p Flint* (1818) 1 Swan 30; *Key v Flint* (1817) 8 Taunt 21; *Rose v Hart* (1818) 8 Taunt 499; *Re Winter, ex p Bolland* (1878) 8 ChD 225; *Eberle's Hotels and Restaurant Co Ltd v Jonas* (1887) 18 QBD 459, CA; *Lord's Trustee v Great Eastern Rly Co* [1908] 2 KB 54, CA (on appeal on another point sub nom *Great Eastern Rly Co v Lord's Trustee* [1909] AC 109, HL); *Ellis & Co's Trustee v Dixon-Johnson* [1925] AC 489, HL; *Rolls Razor Ltd v Cox* [1967] 1 QB 552, [1967] 1 All ER 397, CA; and see *Handley Page Ltd v Customs and Excise Comrs and Rockwell Machine Tool Co Ltd* [1970] 2 Lloyd's Rep 459 (affd [1971] 2 Lloyd's Rep 298, CA). Nor was there a right of set-off in respect of money or goods deposited for a specific purpose which had not been carried out or of a balance of such money remaining when it had been carried out (*Buchanan v Findlay* (1829) 9 B & C 738; *Re Pollitt, ex p Minor* [1893] 1 QB 455, CA; *National Westminster Bank Ltd v Halesowen Presswork and Assemblies Ltd* [1972] AC 785, [1972] 1 All ER 641, HL (where, at 808 and 812 and at 651 and 663, the cases on 'special purpose' are discussed)); money is paid for a special or specific purpose so as to exclude mutuality of dealing if the money is paid in such circumstances that it would be a misappropriation to use it for any other purpose than that for which it is paid (*Re Mid-Kent Fruit Factory Ltd* [1896] 1 Ch 567; *Re City Equitable Fire Insurance Co (No 2)* [1930] 2 Ch 293, CA). The right of set-off existed, however, where there was a debt on one side and a delivery of property with directions to turn it into money on the other: *Naoroji v Chartered Bank of India* (1868) LR 3 CP 444; *Astley v Gurney* (1869) LR 4 CP 714; *Palmer v Day & Sons* [1895] 2 QB 618, CA; *Rolls Razor Ltd v Cox* supra.

A debt owing by the company to one person could not be set off against a joint debt owing by him and another to the company: *Re Pennington and Owen* [1925] Ch 825, CA. In order that debts may be set off, they must be due respectively in the same right: see *National Westminster Bank Ltd v Halesowen Presswork and Assemblies Ltd* supra at 821-822 and at 663-664 per Lord Kilbrandon; *Lister v Hooson* [1908] 1 KB 174, CA.

Debts due to the company from one government department can be set off against moneys owed by the company to other government departments: *Re DH Curtis (Builders) Ltd* [1978] Ch 162, [1978] 2 All ER 183; *Re Cushla Ltd* [1979] 3 All ER 415. As to set-off by contributories and retainer against insolvent estates see paras 738, 739 ante.

Where a third party has deposited moneys with the insolvent company to stand as security for the liabilities of the solvent company, then, if the third party has assumed a personal obligation in respect of the liability of the solvent company, the liability of the solvent company and the third party will be reduced by the amount of the deposit, provided that all conditions precedent to the liability of the third party are satisfied: *MS Fashions Ltd v Bank of Credit and Commerce International SA (in liquidation) (No 2)* [1993] Ch 425, [1993] 3 All ER 769, CA; cf *Re Bank of Credit and Commerce International SA (No 8)* [1998] AC 214, [1997] 4 All ER 568, HL (there is no set-off unless the depositor has assumed personal liability in respect of the liability of the solvent company); *Tam Wing Chuen v Bank of Credit and Commerce Hong Kong Ltd* [1996] BCC 388, PC.

A proprietary claim cannot be set off against a claim for a simple debt, and thus a director of a company who has paid moneys to himself in breach of fiduciary duty and holds such moneys on constructive trust cannot set off a claim under his contract of employment with the company: *Zemco Ltd v Jerrom-Pugh* [1993] BCC 275 at 280, CA, per Hoffmann LJ.

A creditor who is secured in respect of one claim but not in respect of another is obliged to submit to set-off in respect of the unsecured claim, but not in respect of the secured claim: *Re Norman Holding Co Ltd (in liquidation)* [1990] 3 All ER 757, [1991] 1 WLR 10.

The requirement of mutuality under the Insolvency Rules 1986, SI 1986/1925, r 4.90 (as amended) is not satisfied where a person's alleged beneficial interest in funds in a bank account cannot be established without further enquiry: *Bank of Credit and Commerce International SA (in liquidation) v Al-Saud* [1997] 1 BCLC 457, [1997] BCC 63, CA.

Where a debtor of the insolvent company has sought to prove claims against that company, but the proofs have been rejected, the alleged claims against the company cannot be set-off against the debt due under the Insolvency Rules 1986, SI 1986/1925, r 4.90 (as amended): *Bank of Credit and Commerce International (Overseas) Ltd (in liquidation) v Habib Bank Ltd* [1998] 4 All ER 753, [1999] 1 WLR 42.

The court has no inherent or statutory power to disapply the statutory insolvency scheme, including the operation of the Insolvency Rules 1986, SI 1986/1925, r 4.90 (as amended): *Re Bank of Credit and Commerce International SA (in liquidation) (No 10)* [1997] Ch 213, [1996] 4 All ER 796. The court may, in limited and plainly justified circumstances, sanction a scheme of arrangement which involves a departure from the rule under the Companies Act 1985 s 425: *Re Anglo American Insurance Ltd* [2001] 1 BCLC 755.

Where an insurer, in relation to which an administration order has been made, subsequently goes into liquidation, sums due from the insurer to another party are not to be included in the account of mutual dealings rendered under the Insolvency Rules 1986, SI 1986/1925, r 4.90 (as amended) if at the time they became due: (1) an administration application had been made under the Insolvency Act 1986 Sch B1 para 12 (as added) (see para 216 ante) in relation to the insurer; (2) in the case of an appointment of an administrator under Sch B1 para 14 (as added) (see para 228 ante), a notice of appointment had been filed with the court under Sch B1

para 18 (as added) (see para 232 ante); or (3) in the case of an appointment of an administrator under Sch B1 para 22 (as added) (see para 236 ante), a notice of intention to appoint had been filed with the court under Sch B1 para 27 (as added) (see para 238 ante): Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, SI 2002/1242, art 5 (substituted by SI 2003/2134). This is subject to savings relating to special administration regimes and administrations commencing prior to 15 September 2003: see para 145 note 10 ante.

4 le under the Insolvency Act 1986 s 98: see para 945 post.

5 Insolvency Rules 1986, SI 1986/1925, r 4.90(3)(a) (r 4.90(3) substituted by SI 2003/1730).

6 Insolvency Rules 1986, SI 1986/1925, r 4.90(3)(b) (as substituted: see note 5 supra).

7 Ibid r.4.90(3)(c) (as substituted: see note 5 supra).

8 Ibid r 4.90(4).

9 As to preferential debts see para 763 et seq ante.

10 *Re Unit 2 Windows Ltd* [1985] 3 All ER 647, [1985] 1 WLR 1383.

11 *Re Fenton, ex p Fenton Textile Association* [1931] 1 Ch 85 at 112, CA; *Re Fenton (No 2), ex p Fenton Textile Association* [1932] 1 Ch 178; *Re a Debtor (No 66 of 1955), ex p The Debtor v Trustee of the Property of Waite (a bankrupt)* [1956] 3 All ER 225, [1956] 1 WLR 226, CA. See paras 749, 760 ante. Subject to the rule against double proof (see para 749 ante), set-off under the Insolvency Rules 1986, SI 1986/1925, r 4.90 (as amended) applies in respect of a debt arising under a guarantee where the guarantor enters into the guarantee prior to liquidation, but has not paid off the guaranteed debt prior to liquidation: *Re West End Networks Ltd (in liquidation)* [2004] UKHL 24, [2004] 2 All ER 1042 (disapproving reasoning to the contrary effect in *Re a Debtor (No 66 of 1955), ex p The Debtor v Trustee of the Property of Waite (a bankrupt)* supra).

12 *National Westminster Bank Ltd v Halesowen Presswork and Assemblies Ltd* [1972] AC 785, [1972] 1 All ER 641, HL; *Stein v Blake* [1996] 1 AC 243, [1995] 2 All ER 961, HL (decided under the Insolvency Act 1986 s 323: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 547). Effect will be given to insolvency set-off under English law where the winding up in England is ancillary to a principal liquidation in the company's country of incorporation: *Re BCCI SA (in liquidation) (No 9)* (1996) Times, 8 October.

13 *Stein v Blake* [1996] 1 AC 243, [1995] 2 All ER 961, HL (decided under the Insolvency Act 1986 s 323). See also para 744 ante. There is no need for a proof to be lodged to activate set-off in insolvency: *Stein v Blake* supra. Three principles apply to the provisions relating to set-off in insolvency: (1) 'the mandatory principle' (see the text and note 12 supra); (2) 'the retroactivity principle', whereby the account is taken at the date of the winding-up order, being a manifestation of a much wider principle of insolvency law, namely that the liquidation and distribution of the assets of the company are treated as notionally taking place simultaneously on the date of the winding-up order; (3) 'the hindsight principle', whereby the court, in taking the account, has regard to events which have occurred since the date of the winding up: *MS Fashions Ltd v Bank of Credit and Commerce International SA (in liquidation) (No 2)* [1993] Ch 425 at 432, 433, [1993] 3 All ER 769 at 775-776 per Hoffmann LJ; *Stein v Blake* supra at 252-253 and at 964-965 per Lord Hoffmann.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

792 Mutual credit and set-off

TEXT AND NOTES 1-8--SI 1986/1925 r 4.90 substituted: SI 2005/527.

SI 1986/1925 rr 4.86 (see PARA 789) applies for the purposes of r 4.90 to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value: r 4.90(5) (as so substituted). Rules 4.91, 4.93 (see PARAS 793, 795) apply for the purposes of r 4.90 in relation to any sums

due to the company which (1) are payable in a currency other than sterling; (2) are of a periodical nature; or (3) bear interest: r 4.90(6) (as so substituted). Rule 11.13 (see PARA 826) applies for the purposes of r 4.90 to any sum due to or from the company which is payable in the future: r 4.90(7). 'Obligation' means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise: r 4.90(9).

TEXT AND NOTE 3--SI 1986/1925 r 4.90(2) now r 4.90(3).

NOTE 3--Account must also be taken of any reasonable cross-claims: *Swissport (UK) Ltd v Aer Lingus Ltd* [2007] EWHC 1089 (Ch), [2007] All ER (D) 197 (May).

TEXT AND NOTES 4-7--Replaced. The reference in SI 1986/1925 r 4.90(1) to mutual credits, mutual debts or other mutual dealings does not include: (1) any debt arising out of an obligation incurred at a time when the creditor had notice that (a) a meeting of creditors had been summoned under the Insolvency Act 1986 s 98; or (b) a petition for the winding up of the company was pending; (2) any debt arising out of an obligation where (a) the liquidation was immediately preceded by an administration; and (b) at the time the obligation was incurred the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator; (3) any debt arising out of an obligation incurred during an administration which immediately preceded the liquidation; or (4) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into (a) after the company went into liquidation; (b) at a time when the creditor had notice that a meeting of creditors had been summoned under s 98; (c) at a time when the creditor had notice that a winding up petition was pending; (d) where the liquidation was immediately preceded by an administration, at a time when the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator; or (e) during an administration which immediately preceded the liquidation: SI 1986/1925 r 4.90(2).

A sum is to be regarded as being due to or from the company for the purposes of r 4.90(3) whether (1) it is payable at present or in the future; (2) the obligation by virtue of which it is payable is certain or contingent; or (3) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion: SI 1986/1925 r 4.90(4).

TEXT AND NOTE 8--SI 1986/1925 r 4.90(5) now r 4.90(8). However, where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance, or that part of it which results from the contingent or prospective debt, must be paid if and when that debt becomes due and payable: SI 1986/1925 r 4.90(8).

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793. Debt in foreign currency.

For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt must be converted into sterling at the official exchange rate¹ prevailing on the date when the company went into liquidation².

1 For these purposes, 'the official exchange rate' is the middle exchange on the London Foreign Exchange Market at the close of business, as published for the date in question; and, in the absence of any such published rate, it is such rate as the court determines: Insolvency Rules 1986, SI 1986/1925, r 4.91(2) (amended by SI 2003/1730).

2 Insolvency Rules 1986, SI 1986/1925, r 4.91(1). For the meaning of 'go into liquidation' see para 9 note 3 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

793 Debt in foreign currency

TEXT AND NOTE 2--After 'went into liquidation' read 'or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration': SI 1986/1925 r 4.91(1) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/794. Payments of a periodical nature.

794. Payments of a periodical nature.

In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company went into liquidation¹. Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day².

¹ Insolvency Rules 1986, SI 1986/1925, r 4.92(1). As to the position relating to future rent or other payments of a periodical nature not presently due see para 796 post. For the meaning of 'go into liquidation' see para 9 note 3 ante.

² Ibid r 4.92(2). As to payment of rent by a liquidator occupying premises for the benefit of the winding up see para 759 ante; and as to distress for rent see para 889 post. Where rent is payable in advance, the landlord may prove for the balance of the rent to be paid in advance after deduction of the rent due from the liquidator in respect of his beneficial occupancy, the latter being an expense of winding up: see *Shackell & Co v Chorlton & Sons* [1895] 1 Ch 378. Cf *Venner's Electrical Cooking and Heating Appliances Ltd v Thorpe* [1915] 2 Ch 404, CA. As to the position with regard to future rent not presently due see further para 759 ante.

UPDATE

438-938 Winding Up by the Court

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794 Payments of a periodical nature

TEXT AND NOTE 1--After 'went into liquidation' read 'or, if the liquidation was immediately preceded by an administration, up to the date that the company entered administration': SI 1986/1925 r 4.92(1) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/795. Proof for interest.

795. Proof for interest.

Where a debt proved in the liquidation bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the company went into liquidation¹.

In the following circumstances the creditor's claim may include interest on the debt at the prescribed rate² for periods before the company went into liquidation, although not previously reserved or agreed³. If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the company went into liquidation⁴. If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment⁵. In such event, interest may only be claimed for the period from the date of the demand to that of the company's going into liquidation; and⁶ interest is chargeable at a rate not exceeding the prescribed rate⁷.

1 Insolventcy Rules 1986, SI 1986/1925 r 4.93(1). As to the payment of interest on debts proved in the liquidation see para 837 post. For the meaning of 'go into liquidation' see para 9 note 3 ante.

2 The rate of interest to be claimed is the rate specified in the Judgments Act 1838 s 17 (as amended) on the date when the company went into liquidation: Insolventcy Rules 1986, SI 1986/1925 r 4.93(6) (added by SI 1987/1919). The rate currently specified is 8% per annum: Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2).

3 Insolventcy Rules 1986, SI 1986/1925 r 4.93(2).

4 Ibid r 4.93(3).

5 Ibid r 4.93(4).

6 Ie for all the purposes of the Insolventcy Act 1986 and the Insolventcy Rules 1986, SI 1986/1925 (as amended).

7 Ibid r 4.93(5) (amended by SI 1987/1919). See *Re Empire Paper Ltd (in liquidation)* [1999] BCC 406. As to the prescribed rate see note 2 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

795 Proof for interest

TEXT AND NOTES--SI 1986/1925 r 4.93 amended: SI 2010/686.

TEXT AND NOTE 1--After 'went into liquidation' read 'or, if the liquidation was immediately preceded by an administration, any period after the date that the company entered administration': SI 1986/1925 r 4.93(1) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(iv) Quantification of Claim/796. Debt payable at future time.

796. Debt payable at future time.

A creditor may prove for a debt of which payment was not yet due on the date when the company went into liquidation¹, but subject to the provisions² for the adjustment of dividends where payment is made before time³.

1 For the meaning of 'go into liquidation' see para 9 note 3 ante.

2 Ie the Insolvency Rules 1986, SI 1986/1925, r 11.13 (as amended): see para 826 post

3 Ibid r 4.94.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

796 Debt payable at future time

TEXT AND NOTE 1--After 'went into liquidation' read 'or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration': SI 1986/1925 r 4.94 (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/797. Position of secured creditors.

(v) Secured Creditors

797. Position of secured creditors.

A secured creditor¹ need not prove at all, but may rely on his security. He may pursue the remedies which he possessed before the winding up².

¹ For the meaning of 'secured creditor' see para 109 note 10 ante.

Prior to the coming into force of the Insolvency Act 1986, the definition of 'secured creditor' in the Bankruptcy Act 1914 s 167 (repealed) (a secured creditor meant a person who held a mortgage, charge or lien on the company's property, or any part of it, as a security for a debt due to him from the company) applied in the winding up of insolvent companies: *Re Lough Neagh Ship Co, ex p Thompson* [1896] 1 IR 29; *Re Leinster Contract Corpn Ltd* [1903] 1 IR 517.

Besides mortgagees and holders of debentures or debenture stock entitled to the benefit of a charge on the company's assets, persons holding security under an execution put in, or under a garnishee order nisi (now called a third party debt order) which had been duly served (*Re Stanhope Silkstone Collieries Co* (1879) 11 ChD 160, CA; *Re National United Investment Corpn* [1901] 1 Ch 950), or under a charging order which had been duly served (*Haly v Barry* (1868) 3 Ch App 452), and persons holding security by agreement (*Re Printing and Numerical Registering Co* (1878) 8 ChD 535), were held to be secured creditors in a winding up. An execution creditor who had seized land under a writ of elegit (abolished by the Administration of Justice Act 1956 s 34(1)) was a secured creditor (*Re Gourlay, ex p Abbott* (1880) 15 ChD 447; *Re Hobson* (1886) 33 ChD 493); but a creditor who obtained the appointment of a receiver, or issued a writ of sequestration, was not a secured creditor except as regards property actually in the possession of the receiver or the sequestrator (*Croshaw v Lyndhurst Ship Co* [1897] 2 Ch 154; *Re Potts, ex p Taylor* [1893] 1 QB 648, CA). In England, a landlord with power to distrain was not a secured creditor (*Re Oak Pitts Colliery Co* (1882) 21 ChD 322, CA); but in Scotland a landlord was a secured creditor (*Re Wanzer Ltd* [1891] 1 Ch 305); and so was a creditor who had arrested in Scotland, *jurisdictionis fundandae causa*, property of a company which was subsequently ordered to be wound up (*Re West Cumberland Iron and Steel Co* [1893] 1 Ch 713; *Re Queensland Mercantile and Agency Co, ex p Australasian Investment Co, ex p Union Bank of Australia* [1892] 1 Ch 219, CA). In order to be a secured creditor of a company in liquidation, the creditor must hold a security on property of the company at the commencement of the liquidation; a security on the property of a third person is not enough: see *Re Hallett & Co, ex p Cocks, Biddulph & Co* [1894] 2 QB 256, CA. When security is taken without notice of an irregularity known to the directors, and is paid off by one of the directors, the security is valid: *Owen and Ashworth's Claim, Whitworth's Claim* [1901] 1 Ch 115, CA.

² In a winding up by the court, the enforcement by action of such remedies may not be proceeded with or commenced without leave: see para 896 post. In a voluntary winding up (see para 939 et seq post) no such leave is necessary.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/798. Proof by secured creditors.

798. Proof by secured creditors.

If a secured creditor¹ realises his security, he may prove for the balance of his debt, after deducting the amount realised². He may appropriate the proceeds of realisation as he may think fit between preferential and non-preferential claims³. The net proceeds of the realisation must not be applied to interest accrued thereafter; but profits made from an unrealised security thereafter may be so applied⁴.

If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured⁵.

1 For the meaning of 'secured creditor' see paras 109 note 10, 797 note 1 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.88(1). As to the position where a creditor values his security for the purposes of proof and subsequently realises the security see para 803 post.

3 *Re William Hall (Contractors) Ltd* [1967] 2 All ER 1150, [1967] 1 WLR 948.

4 *Quartermaine's Case* [1892] 1 Ch 639; *Re Savin* (1872) 7 Ch App 760.

5 Insolvency Rules 1986, SI 1986/1925, r 4.88(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/799. Value of security.

799. Value of security.

A secured creditor¹ may, with the agreement of the liquidator or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security². If, however, a secured creditor being the petitioner has in the petition put a value on his security, or has voted³ in respect of the unsecured balance of his debt, he may revalue his security only with leave of the court⁴.

1 For the meaning of 'secured creditor' see paras 109 note 10, 797 note 1 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.95(1).

3 As to voting by a secured creditor see para 668 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.95(2). As to the making of applications see para 1055 et seq post; and as to dividends payable to a secured creditor who revalues his security see para 823 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/800. Surrender for non-disclosure.

800. Surrender for non-disclosure.

If a secured creditor¹ omits to disclose his security in his proof of debt, he must surrender his security for the general benefit of creditors, unless the court, on application² by him, relieves him from the effect of this provision, on the ground that the omission was inadvertent³ or the result of honest mistake⁴. If the court grants such relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just⁵.

1 For the meaning of 'secured creditor' see paras 109 note 10, 797 note 1 ante.

2 As to the making of applications see para 1055 et seq post.

3 Inadvertence covers a case where the omission is accidental, but not where the omission was made deliberately and on purpose: *Re Burr, ex p Clarke* (1892) 67 LT 232; *Re Safety Explosives Ltd* [1904] 1 Ch 226, CA; *Re Rowe, ex p West Coast Gold Fields Ltd* [1904] 2 KB 489.

4 Insolvency Rules 1986, SI 1986/1925, r 4.96(1); and see *Re Henry Lister & Co Ltd* [1892] 2 Ch 417. Nothing in the Insolvency Rules 1986, SI 1986/1925, r 4.96 (as amended) affects the rights in rem of creditors or third parties protected under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 5 (third parties' rights in rem): Insolvency Rules 1986, SI 1986/1925, r 4.96(3) (added by SI 2002/1307). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 4.96(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/801. Redemption by liquidator.

801. Redemption by liquidator.

The liquidator may at any time give notice to a creditor whose debt is secured¹ that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof². The creditor then has 21 days, or such longer period as the liquidator may allow, in which, if he so wishes, to exercise his rights to revalue his security, with the leave of the court³ where this is required⁴. If the creditor revalues his security, the liquidator may only redeem at the new value⁵. If the liquidator redeems the security, the cost of transferring it is payable out of the assets⁶.

A secured creditor may at any time, by a notice in writing, call on the liquidator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the liquidator then has six months in which to exercise the power or determine not to exercise it⁷.

1 For the meaning of 'secured creditor' see paras 109 note 10, 797 note 1 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.97(1). Nothing in r 4.97 affects the rights in rem of creditors or third parties protected under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 5 (third parties' rights in rem): Insolvency Rules 1986, SI 1986/1925, r 4.96(3) (added by SI 2002/1307). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

3 Leave of the court is required where the Insolvency Rules 1986, SI 1986/1925, r 4.95(2) (see para 799 ante) applies: r 4.97(2).

4 Ibid r 4.97(2).

5 Ibid r 4.97(2).

6 Ibid r 4.97(3).

7 Ibid r 4.97(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

801 Redemption by liquidator

TEXT AND NOTE 6--SI 1986/1925 r 4.97(3) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/802. Test of security's value.

802. Test of security's value.

If he is dissatisfied with the value which a secured creditor¹ puts on his security, whether in his proof or by way of revaluation², the liquidator may require any property comprised in the security to be offered for sale³. The terms of sale must be such as may be agreed, or as the court may direct; and, if the sale is by auction, the liquidator on behalf of the company, and the creditor on his own behalf, may appear and bid⁴.

1 For the meaning of 'secured creditor' see paras 109 note 10, 797 note 1 ante.

2 *Ie* under the Insolvency Rules 1986, SI 1986/1925, r 4.97: see para 801 ante.

3 *Ibid* r 4.98(1). Nothing in r 4.98 affects the rights in rem of creditors or third parties protected under EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 5 (third parties' rights in rem): Insolvency Rules 1986, SI 1986/1925, r 4.96(3) (added by SI 2002/1307). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.98(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

802 Test of security's value

NOTE 4--SI 1986/1925 r 4.98(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(11) PROOF OF DEBTS/(v) Secured Creditors/803. Realisation of security by creditor.

803. Realisation of security by creditor.

If a creditor who has valued his security¹ subsequently realises it, whether or not at the instance of the liquidator², the net amount realised must be substituted for the value previously put by the creditor on the security, and that amount must be treated in all respects as an amended valuation made by him³.

1 See para 799 et seq ante.

2 See para 802 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.99.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(i) In general/804. How assets are to be applied.

(12) DISTRIBUTION OF ASSETS

(i) In general

804. How assets are to be applied.

All fees, costs, charges and expenses properly incurred in the winding up¹, including the liquidator's remuneration, are payable out of the company's assets in priority to all other claims, although in a compulsory winding up there is no statutory provision to that effect². After the costs, charges and expenses have been paid, the assets are applied in payment of the company's debts and liabilities to creditors³. When the creditors have been paid in full, any surplus is distributed among the contributories according to their rights among themselves as adjusted by the court⁴.

1 For a case of a debt incurred in a transaction by a special manager ratified by the liquidator see *Re Mawcon Ltd* [1969] 1 All ER 188, [1969] 1 WLR 78.

2 *Webb v Whiffin* (1872) LR 5 HL 711 at 735.

3 *Ditcham v Miller* (1931) 100 LJPC 177. For special provision as to the application of the assets of insurance companies on winding up see the Financial Services and Markets Act 2000 s 378; and FINANCIAL SERVICES AND

INSTITUTIONS vol 48 (2008) PARA 507. The court will not impose a remedial constructive trust over the assets of a company in administration so as to exclude that asset from distribution among creditors in accordance with the statutory scheme: *Re Polly Peck International plc (No 2)*, *Marangos Hotel Co Ltd v Stone* [1998] 3 All ER 812, [1998] 2 BCLC 185, CA.

4 See the Insolvency Act 1986 s 154; and para 831 et seq post. For the meaning of 'contributory' see para 703 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/805. Costs prior to winding up.

(ii) Payment of Costs, Charges and Expenses

805. Costs prior to winding up.

Costs which a company has been ordered to pay previously to the winding up are provable in the winding up. A liquidator is entitled to have assessed a bill for solicitor's costs incurred by the company prior to liquidation, unless 12 months have elapsed at the commencement of the winding up since the delivery of the bill and there are no special circumstances¹.

¹ See the Solicitors Act 1974 s 70(3); *Re Marseilles Extension Rly and Land Co, ex p Evans* (1870) LR 11 Eq 151; *Re Foss, Bilbrough, Plaskitt and Foss* [1912] 2 Ch 161; and LEGAL PROFESSIONS vol 66 (2009) PARA 974. As to assessments see *Re Defiant Cycle Co Ltd* [1955] Ch 490, [1955] 2 All ER 58; *Re Mercury Model Aircraft Supplies Ltd* [1956] 2 All ER 885, [1956] 1 WLR 1153.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/806. Claims begun before winding up.

806. Claims begun before winding up.

If a claim is pending to which the company is a party, and the company by its liquidator determines to prosecute or defend the proceedings, the costs must in case of failure be paid in full out of the assets¹. Thus, where a claim begun by the company before winding up is afterwards continued by leave² and the defendant obtains judgment for costs, he is entitled to be paid in full as from the commencement of the claim³. Where a claim has been brought against a company before winding up, and the claimant subsequently recovers judgment for damages and costs, the costs are ordered to be paid in full out of the assets⁴. If, however, a representative claim brought by shareholders against promoters for the company's benefit before winding up is continued after the winding up without leave, and afterwards dismissed by consent, the costs of the claim cannot be paid out of the assets⁵.

1 *Re Wenborn & Co* [1905] 1 Ch 413. The costs should be paid prior to payment of the general costs of the winding up, but only after the costs of realising the company's assets have been paid: *Re Movitex Ltd* [1990] BCLC 785, [1990] BCC 491 (where the liquidators adopted an action begun prior to the winding up).

2 See paras 895-896 post.

3 *Re London Drapery Stores* [1898] 2 Ch 684.

4 *Re Wenborn & Co* [1905] 1 Ch 413. This rule is not affected by the fact that the judgment obtained against the liquidator is under appeal: *Re Thomas Free & Sons Ltd* (1911) 56 Sol Jo 175.

5 *Re Hull Central Drapery Co* (1880) 15 ChD 326, CA. Where a claim by the company for calls before winding up is discontinued and the liquidator proceeds by summons in the winding up, the defendant may be allowed to deduct his costs of the claim from any sum recovered from him by the liquidator: *Re United States Service Association* [1901] 1 Ch 97.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/807. Claims brought after winding up.

807. Claims brought after winding up.

Where, after commencement of the winding up, a claim or other proceeding is brought in the company's name or by its liquidator, and an order for costs is made simply directing payment of costs or directing that costs be paid out of the assets, the costs are payable in full out of the company's assets in priority to the costs of winding up¹. Similarly, where leave is given to bring a claim against the company² and to the liquidator to defend it³, the successful claimant is entitled to have his costs in full out of the assets, including his costs of obtaining leave⁴.

¹ *Re Pacific Coast Syndicate Ltd* [1913] 2 Ch 26; *Re Wenborn & Co* [1905] 1 Ch 413; *Re Home Investment Society* (1880) 14 ChD 167; *Madrid Bank v Pelly* (1869) LR 7 Eq 442; *Re Bank of Hindustan, China and Japan, ex p Levick* (1867) LR 5 Eq 69; *Re Bank of Hindustan, China and Japan, ex p Smith* (1867) 3 Ch App 125; *Ferrao's Case* (1874) 9 Ch App 355; *Norglen Ltd (in liquidation) v Reeds Rains Prudential Ltd* [1999] 2 AC 1, [1998] 1 All ER 218, HL; *Smith v UIC Insurance Co Ltd* [2001] BCC 11. In *Re Movitex Ltd* [1990] BCLC 785, [1990] BCC 491 (where the action was commenced prior to the winding up, but this was held at 790 and at 495 to be irrelevant) the costs were ordered to be paid prior to the general costs of the winding up, but only after the costs of realising the company's assets had been paid). See further paras 594 ante, 809 post. The lien of the successful party's solicitor for the amount of the costs may also be satisfied in full out of the assets: *Re Bank of Hindustan, China and Japan, ex p Smith* supra; cf para 676 ante.

² See para 893 post.

³ See para 578 ante.

⁴ *Bailey and Leetham's Case* (1869) LR 8 Eq 94; *Re Wenborn & Co* [1905] 1 Ch 413.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/808. Realisation of assets subject to security.

808. Realisation of assets subject to security.

Where property subject to a specific charge is realised by the liquidator in the winding up, the proceeds are applicable:

- 1165 (1) to the costs of realisation;
- 1166 (2) in payment of the costs of preservation; and
- 1167 (3) in payment of the principal, interest and mortgagees' costs,

all of which have priority over the general costs of the liquidation¹.

When the money recovered by the liquidator in misfeasance proceedings² is subject to a debenture charge, the liquidator's costs of the proceedings, but not the costs of the petition for winding up, are payable out of the money so recovered in priority to the debentures³.

Where property is recoverable by the company by action, the liquidator's solicitor may be entitled to claim a common law lien on that property for his costs⁴, including the costs of establishing his retainer⁵. His bill of costs is part of the costs of winding up⁶.

The enforceability of a solicitor's lien in respect of costs incurred before winding up is limited⁷. To the extent that it is enforceable, a solicitor's lien may be enforced by a charging order after the winding up has commenced⁸. To the extent that he has an enforceable lien on documents, this may be enforced in respect of documents which came to his hands before, and not in the course of, the winding up⁹; but this does not apply in any event to books or documents on which the directors had no power to create a lien, such as the registers¹⁰ or other books or documents which are required to be kept at the company's office¹¹, or to the file of proceedings in the winding up, and the documents relating to them¹², nor may any lien on the company's books or documents be acquired in respect of costs incurred before the incorporation of the company¹³.

The rights of successive solicitors to payment, and consequently to a lien, rank *pari passu*¹⁴.

1 *Re Marine Mansions Co* (1867) LR 4 Eq 601; *Re Oriental Hotels Co, Perry v Oriental Hotels Co* (1871) LR 12 Eq 126; *Re Regents Canal Ironworks Co, ex p Grissell* (1875) 3 ChD 411, CA; *Re Ormerod, Grierson & Co* [1890] WN 217; *Re Northern Milling Co* [1908] 1 IR 473; cf *Lathom v Greenwich Ferry Co* (1895) 72 LT 790.

2 As to proceedings for misfeasance see para 688 et seq ante.

3 *Re Anglo-Austrian Printing and Publishing Union, Brabourne v Anglo-Austrian Printing and Publishing Union* [1895] 2 Ch 891; cf *Re Bonelli's Electric Telegraph Co, Cook's Claim (No 2)* (1874) LR 18 Eq 656 (where a fund was paid into court to answer a particular claim).

4 *Re Massey, Re Freehold Land and Brickmaking Co* (1870) LR 9 Eq 367 at 368. Alternatively the solicitor could obtain a charging order under the Solicitors Act 1974 s 73: see LEGAL PROFESSIONS vol 66 (2009) PARA 1011 et seq. See further COMPANIES vol 14 (2009) PARA 611. As to the lien of a solicitor generally see LEGAL PROFESSIONS vol 66 (2009) PARA 996 et seq. Strictly a lien exists only over property in the solicitor's possession. His rights as to money recovered by his exertions are to apply to the court for a charge on it for his costs: *James Bibby Ltd v Woods and Howard* [1949] 2 KB 449, [1949] 2 All ER 1, DC.

5 *Re Meter Cabs Ltd* [1911] 2 Ch 557, applying *Re Hill* (1886) 33 ChD 266, CA.

6 *Re Massey, Re Freehold Land and Brickmaking Co* (1870) LR 9 Eq 367 at 369.

7 See para 676 ante.

8 *Re Born, Curnock v Born* [1900] 2 Ch 433. In Scotland, a solicitor who has incurred costs in recovering money for a company registered in England which subsequently goes into voluntary liquidation has a charge on the money even though it is not under the control of the Scottish courts: *Phillip v Willson* (1911) 48 SLR 947.

9 *Re Rapid Road Transit Co* [1909] 1 Ch 96; *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA.

10 *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA.

11 *Re Anglo-Maltese Hydraulic Dock Co Ltd* (1885) 54 LJ Ch 730.

12 *Re Union Cement and Brick Co, ex p Pulbrook* (1869) 4 Ch App 627.

13 *Re Galland* (1885) 31 ChD 296, CA; cf *Re English and Colonial Produce Co Ltd* [1906] 2 Ch 435 at 439, CA; *Re National and Motor Mail-Coach Co Ltd, Clinton's Claim* [1908] 2 Ch 515, CA.

14 *Re Audley Hall Cotton Spinning Co* (1868) LR 6 Eq 245.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/809. Immediate payment of costs.

809. Immediate payment of costs.

The successful litigant whose costs are ordered to be paid by the liquidator of the company out of its assets is *prima facie* entitled to have his costs paid immediately, and the order of priority¹ does not affect the matter². The date of the order gives no priority, but payments will not be indefinitely postponed until all claims have come in³. The onus is on the liquidator to show that payment of the costs should be postponed until provision has been made for any prior claims⁴. Where the costs are to be paid by the liquidator personally, and he is to be at liberty to retain them out of the company's assets, those costs rank before the general costs of liquidation, except, it seems, for the costs of realisation⁵.

1 See para 810 post.

2 See the Insolvency Rules 1986, SI 1986/1925, r 4.220(2); and para 810 note 4 post. See also *Re London Metallurgical Co* [1895] 1 Ch 758. As to the costs of outside litigation see para 594 ante.

3 *Re London Metallurgical Co* [1895] 1 Ch 758.

4 *Re London Metallurgical Co* [1895] 1 Ch 758.

5 *Re Movitex Ltd* [1990] BCLC 785 (holding that *Re Dominion of Canada Plumbago Co* (1884) 27 ChD 33, CA, was not binding on this issue; and following *Re Staffordshire Gas and Coke Co* [1893] 3 Ch 523 and *Re London Metallurgical Co* [1895] 1 Ch 758).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/810. Priority of payments.

810. Priority of payments.

In the event of the company's assets¹ being insufficient to satisfy the liabilities, the court may make an order as to the payment out of the assets of the expenses incurred in the winding up² in such order of priority as the court thinks just³.

Subject to any order of the court⁴, whether the assets are or are not insufficient to satisfy the liabilities⁵, the expenses of the liquidation are payable out of the assets in the following order of priority:

- 1168 (1) expenses or costs which are properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company or otherwise relating to the conduct of any legal proceedings which he has power to bring or defend whether in his own name or in the name of the company⁶;
- 1169 (2) expenses or costs which relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination⁷;
- 1170 (3) expenses or costs which are incurred in holding an examination of an unfit witness⁸ where the application for it was made by the official receiver⁹;
- 1171 (4) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of the company¹⁰;
- 1172 (5) the fees payable under any fees order¹¹, including those payable to the official receiver¹², and any remuneration payable to him under general regulations¹³;
- 1173 (6) the fee payable under any order made¹⁴ for the performance by the official receiver of his general duties as official receiver¹⁵;
- 1174 (7) any repayable deposit lodged under any such order¹⁶ as security for such a fee¹⁷;
- 1175 (8) the cost of any security provided by a provisional liquidator, liquidator or special manager¹⁸;
- 1176 (9) the remuneration of the provisional liquidator, if any¹⁹;
- 1177 (10) any deposit lodged on an application for the appointment of a provisional liquidator²⁰;
- 1178 (11) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court²¹;
- 1179 (12) the remuneration of the special manager, if any²²;
- 1180 (13) any amount payable to a person employed or authorised²³ to assist in the preparation of a statement of affairs or of accounts²⁴;
- 1181 (14) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or for an extension of time for submitting such a statement²⁵;
- 1182 (15) the costs of employing a shorthand writer in any case other than one appointed by an order of the court at the instance of the official receiver in connection with an examination²⁶;
- 1183 (16) any necessary disbursements by the liquidator in the course of his administration, including any expenses incurred by members of the liquidation

- committee or their representatives and allowed by the liquidator²⁷, but not including any payment of corporation tax in specified circumstances²⁸;
- 1184 (17) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services²⁹ for the company³⁰;
- 1185 (18) the remuneration of the liquidator, up to any amount not exceeding that which is payable to the official receiver under general regulations³¹;
- 1186 (19) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company, without regard to whether the realisation is effected by the liquidator, a secured creditor, or a receiver or manager appointed to deal with a security³²;
- 1187 (20) the balance, after payment of any sums due to the liquidator³³, of any remuneration due to the liquidator³⁴; and
- 1188 (21) any other expenses properly chargeable by the liquidator in carrying out his functions in the liquidation³⁵.

This is a complete statement of liquidation expenses subject only to the qualifications contained in the Insolvency Rules 1986 themselves³⁶, and the court will not vary this order of priority except in exceptional circumstances³⁷.

1 'Assets' for this purpose do not include assets subject to a floating charge: *Buchler v Talbot* [2004] UKHL 9, [2004] 1 All ER 1289 (overruling *Re Barleycorn Enterprises Ltd, Mathias and Davies (a firm) v Down (liquidator of Barleycorn Enterprises Ltd)* [1970] Ch 465, [1970] 2 All ER 155, CA). Where a floating charge covers the entire undertaking of the company, the company's sole asset in the winding up is the equity of redemption in respect of the charged assets: *Buchler v Talbot* supra. Hence, where a floating charge has been granted over assets of a company, there are two distinct funds, namely assets subject to the floating charge, and assets not so subject. In respect of the fund of assets subject to a floating charge, the priorities are: (1) the costs of preserving and realising the assets; (2) the receiver's remuneration and the proper costs and expenses of the receivership; (3) the debts which are preferential in the receivership; (4) the principal and interest secured by the floating charge; (5) the company: *Buchler v Talbot* supra at [88] per Lord Millett. In respect of assets not subject to a floating charge, the priorities are: (a) the costs of preserving and realising the assets; (b) the liquidator's remuneration and the proper costs and expenses of the winding-up; (c) the debts which are preferential in the winding-up; (d) the charge holder to the extent that the preferential debts have been paid out of assets subject to the floating charge; (e) the general body of creditors: *Buchler v Talbot* supra at [88] per Lord Millett. The order of priorities must now be read subject to the effect of the provisions prescribing a share of assets for unsecured creditors: see para 773 ante. As to priorities in respect of assets subject to a fixed or specific charge see para 808 supra. The reasoning in cases such as *Re MC Bacon Ltd* [1991] Ch 127, [1990] 3 WLR 646, *Re Portbase Clothing Ltd* [1993] Ch 388, [1993] 3 All ER 829 and *Re RS & M Engineering Co Ltd, Mond v Hammond Suddards (a firm) (No 2)* [2000] Ch 40, [1999] 3 WLR 697, [1999] 2 BCLC 485, CA, must be read in light of the fact that those cases were decided before *Re Barleycorn Enterprises Ltd, Mathias and Davies (a firm) v Down* supra, was overruled by the House of Lords in *Buchler v Talbot* supra.

2 All fees, costs, charges and other expenses incurred in the course of the winding up or administration are to be regarded as expenses of the winding up or the administration: Insolvency Rules 1986, SI 1986/1925, r 12.2(1) (amended by SI 2003/1730). The amendment of this provision does not apply where a petition for an administration order was presented prior to 15 September 2003, in which event it is provided that all fees, costs, charges and other expenses incurred in the course of the winding up are to be regarded as expenses of the winding up: Insolvency Rules 1986, SI 1986/1925, r 12.2 (as originally enacted); Insolvency (Amendment) Rules 2003, SI 2003/1730, r 1(2). The costs associated with the prescribed part must be paid out of the prescribed part: see the Insolvency Rules 1986, SI 1986/1925, r 12.2.

3 Insolvency Act 1986 s 156. This provision is concerned with priority only: *Re RS & M Engineering Co Ltd, Mond v Hammond Suddards (a firm) (No 2)* [2000] Ch 40, [1999] 3 WLR 697, [1999] 2 BCLC 485, CA; and see para 1009 note 2 post. It has been held that costs incurred against liquidators in a winding up are not expenses incurred in the winding up within the meaning of the Insolvency Act 1986 s 156, and hence s 156 has no application to such costs: *Re MT Realisations* [2003] EWHC 2895 (Ch) at [19], [2004] 1 All ER 577 at [19], [2004] 1 WLR 1678 at [19] per Laddie J. Corporation tax on profits earned after the commencement of the winding up is an expense of the winding up: *Re Beni-Felkai Mining Co Ltd* [1934] Ch 406 (income tax). See also *Re Mesco Properties Ltd* [1979] 1 All ER 302, [1979] 1 WLR 558 (affd [1980] 1 All ER 117, [1980] 1 WLR 96, CA) (corporation tax); *Re Grey Marlin Ltd* [1999] 4 All ER 429, [2000] 1 WLR 370; *Re Toshoku Finance UK plc (in liquidation), Kahn v IRC* [2002] UKHL 6, [2002] 3 All ER 961; and heads (17) and (19) in the text.

4 See the Insolvency Rules 1986, SI 1986/1925, r 4.220(1). Nothing contained in r 4.218 (as amended) (see the text and notes 6-35 *infra*) or r 4.219 (as amended) (see para 811 *post*) applies to or affects the power of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; nor do they affect the rights of any person to whom such costs are ordered to be paid: r 4.220(2).

5 *Re London Metallurgical Co* [1895] 1 Ch 758.

6 Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(a)(i) (r 4.218(1)(a) substituted by SI 2002/2712). The substitution of these provisions does not apply in relation to a winding up by the court where the petition was presented prior to 1 January 2003 or a voluntary winding up where the resolution for winding up was passed prior to that date, in which event the expenses or costs referred to in heads (1)-(3) in the text are instead expressed as the expenses properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company: r 4.218(1)(a) (as originally enacted); Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 4(2). As to the official receiver see para 503 *et seq ante*.

Corporation tax is not a relevant expense for these purposes (see *Re Beni-Felkai Mining Co Ltd* [1934] Ch 406; and heads (13), (15) in the text), but the costs of a voluntary liquidator's opposition to a compulsory order may be (*Re William Adler & Co Ltd* [1935] Ch 138, CA). In relation to winding-up proceedings where, in the case of a winding up by the court, the petition was presented prior to 1 January 2003 or, in the case of a voluntary winding up, the resolution for winding up was passed prior to that date, the costs of unsuccessful claims under the Insolvency Act 1986 s 214 (wrongful trading: see para 914 *post*) and s 239 (preferences: see para 843 *et seq post*) are not such an expense, as the claim inheres in the liquidator and not the company and any sums recovered do not become part of the company's assets: *Re MC Bacon Ltd* [1991] Ch 127, [1990] 3 WLR 646 (read with the Insolvency (Amendment) (No 2) Rules 2002, SI 2002/2712, r 4(2)). Further, the costs of a failed attempt to realise or get in assets of the company are not such an expense: *Re MC Bacon Ltd* *supra*; and see further *Re RS & M Engineering Co Ltd, Mond v Hammond Suddards (a firm) (No 2)* [2000] Ch 40, [1999] 3 WLR 697, [1999] 2 BCLC 485, CA (the liquidator had no right to payment of the costs of unsuccessful proceedings); *Re Exchange Travel (Holdings) Ltd (in liquidation) (No 3)*, *Katz v McNally* [1997] 2 BCLC 579, CA (containing dicta of Phillips LJ and Morritt LJ to the contrary; the decision was not cited to the Court of Appeal in *Re RS & M Engineering Co Ltd* *supra*); *Re Floor Fourteen Ltd, Lewis v IRC* [2001] 3 All ER 499, [2001] 2 BCLC 392, CA (where the Court of Appeal followed *Re MC Bacon Ltd* *supra* and *Re RS & M Engineering Co Ltd, Mond v Hammond Suddards (a firm) (No 2)* *supra*, and disapproved the contrary dicta in *Re Exchange Travel (Holdings) Ltd (in liquidation) (No 3)*, *Katz v McNally* *supra*). The reasoning in *Re MC Bacon Ltd* *supra* and *Re RS & M Engineering Ltd, Mond v Hammond Suddards (a firm) (No 2)* *supra*, in so far as it relates to the issue of whether liquidation expenses can be paid out of assets subject to a floating charge, is wrong: see *Buchler v Talbot* [2004] UKHL 9, [2004] 1 All ER 1289.

7 Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(a)(ii) (as substituted: see note 6 *supra*). See paras 547, 684 *ante*.

8 *Ie* under *ibid* r 4.214: see para 544 *ante*.

9 *Ibid* r 4.218(1)(a)(iii) (as substituted: see note 6 *supra*).

10 *Ibid* r 4.218(1)(b).

11 *Ie* an order made under the Insolvency Act 1986 s 414 or s 415A (as added): see paras 14 *ante*, 1106 *post*.

12 *Ie* other than the fee referred to in the Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(d)(i) (as substituted): see the text and notes 14-15 *infra*.

13 *Ibid* r 4.218(1)(c) (r 4.218(1)(c), (d) substituted by SI 1995/586; and the Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(c) amended by SI 2004/584).

14 *Ie* under the Insolvency Act 1986 s 414: see para 1106 *post*.

15 Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(d)(i) (as substituted: see note 13 *supra*).

16 *Ie* any order under the Insolvency Act 1986 s 414: see para 1106 *post*.

17 Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(d)(ii) (as substituted: see note 13 *supra*).

18 *Ibid* r 4.218(1)(e). As to security to be provided in the case of a liquidator see para 11 *ante*; as to security to be provided in the case of a provisional liquidator see para 495 *ante*; and as to security to be provided in the case of a special manager see para 500 *ante*.

19 Ibid r 4.218(1)(f). As to the remuneration of the provisional liquidator see para 496 ante. This provision does not deal expressly with the expenses (as opposed to the remuneration) of a provisional liquidator, though it may be that such expenses should be treated as falling within r 4.218(1)(a)(i) (as substituted) (see the text and notes 5-6 supra): *Re UOC Corpn* [1997] 2 BCLC 569.

20 Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(g). See para 493 ante.

21 Ibid r 4.218(1)(h). See para 482 ante. The petitioner's costs include the costs of establishing his debt (*Re Universal Non-Tariff Fire Assurance Co, ex p Forbes & Co* (1875) 23 WR 464), and costs on appeal (*Re Bright, ex p Wingfield and Blew* [1903] 1 KB 735). The priority thus given to assessed costs does not prevent a solicitor from proving for any unpaid balance of costs: *Re CB & M (Tailors) Ltd* [1932] 1 Ch 17. The costs of proceedings brought unsuccessfully under the Insolvency Act 1986 s 214 or s 239 do not fall within this category: *Re MC Bacon Ltd* [1991] Ch 127, [1990] 3 WLR 646 (decided prior to the decision of the House of Lords in *Buchler v Talbot* [2004] UKHL 9, [2004] 1 All ER 1289, but remaining authoritative on the point cited). Such costs would now fall under the Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(a)(i) (as substituted) (see the text and notes 5-6 supra) if properly chargeable or incurred.

22 Ibid r 4.218(1)(j). See para 500 ante.

23 Ie under ibid Pt 4 Ch 6 (rr 4.32-4.42) (as amended).

24 Ibid r 4.218(1)(k). See para 523 ante.

25 Ibid r 4.218(1)(l). See para 522 ante.

26 Ibid r 4.218(1)(la) (added by SI 2002/2712). See para 547, 684 ante.

27 Ie under the Insolvency Rules 1986, SI 1986/1925, r 4.169: see para 642 ante.

28 Ibid r 4.218(1)(m) (amended by SI 1987/1919). The specified circumstances are those referred to in the Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(p) (as amended) (see the text and note 32 infra). Cf *Re Mesco Properties Ltd* [1979] 1 All ER 302, [1979] 1 WLR 558 (affd [1980] 1 All ER 117, [1980] 1 WLR 96, CA); *Re Toshoku Finance UK plc (in liquidation)*, *Kahn v IRC* [2002] UKHL 6, [2002] 3 All ER 961. A post-liquidation liability to community charge is an expense of the liquidation for these purposes: *Re Toshoku Finance UK plc (in liquidation)*, *Kahn v IRC* supra (overruling *Re Kentish Homes Ltd* [1993] BCLC 1375).

29 Ie as required or authorised by or under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

30 Ibid r 4.218(1)(n).

31 Ibid r 4.218(1)(o). As to the liquidator's remuneration generally see para 589 et seq ante; and as to the amount payable to the official receiver under general regulations see para 548 ante.

32 Ibid r 4.218(1)(p) (amended by SI 1987/1919).

33 Ie under the Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(o) (see the text and note 31 supra).

34 Ibid r 4.218(1)(q).

35 Ibid r 4.218(1)(r) (added by SI 2002/2712).

36 *Re Toshoku Finance UK plc (in liquidation)*, *Kahn v IRC* [2002] UKHL 6, [2002] 3 All ER 961. As to the similar rule in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 576. In an appropriate case, the liquidator may seek guidance from the court as to whether any anticipated item of expenditure would fall within these rules: *Re Demaglass Ltd*, *Lewis v Dempster* [2002] EWHC 3138 (Ch), [2003] 1 BCLC 412.

37 *Re London Metallurgical Co* [1895] 1 Ch 758; *Re Linda Marie Ltd (in liquidation)* [1989] BCLC 46, 4 BCC 463.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

810 Priority of payments

TEXT AND NOTE 1--See also the Insolvency Act 1986 s 176ZA (added by the Companies Act 2006 s 1282(1)) under which property subject to a floating charge may, where necessary, be used to fund the general expenses of winding up in priority to the floating charge holder and to any preferential creditors to be paid out of that property.

TEXT AND NOTES 1-35--SI 1986/1925 r 4.218(1) further amended, rr 4.218A-4.218E (litigation expenses and property subject to a floating charge), Sch 4 Form 4.74 added: SI 2008/737.

NOTE 31--In head (18) for 'to the official receiver under general regulations' read 'under SI 1986/1925 Sch 6': r 4.218(1)(o) (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(ii) Payment of Costs, Charges and Expenses/811. Winding up commencing as voluntary.

811. Winding up commencing as voluntary.

In a winding up by the court which follows immediately on a voluntary winding up, whether a members' voluntary winding up or a creditors' voluntary winding up, such remuneration of the voluntary liquidator and costs and expenses of the voluntary liquidation as the court may allow are to rank in priority to the expenses properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any assets of the company¹.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.219. As to the order of priority of the expenses referred to in the text see para 810 ante. As to the review of a voluntary liquidator's remuneration see *Re Mortimers (London) Ltd* [1937] Ch 289, [1937] 2 All ER 364; *Re Tony Rowse NMC Ltd* [1996] 2 BCLC 225. As to voluntary winding up generally see para 939 et seq post. As to the official receiver see para 503 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

811 Winding up commencing as voluntary

TEXT AND NOTES--SI 1986/1925 r 4.219 amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/812. Priority of debts.

(iii) Distribution of Assets among Creditors and Employees

812. Priority of debts.

Debts other than preferential debts¹ rank equally between themselves in the winding up by the court and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves². This provision applies whether or not the company is unable to pay its debts³.

1 As to preferential debts see para 763 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.181(1) (renumbered by SI 1987/1919).

3 Insolvency Rules 1986, SI 1986/1925, r 4.181(2) (added by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/813. Manner of distributing assets.

813. Manner of distributing assets.

Whenever the liquidator has sufficient funds in hand for the purpose, he must, subject to the retention of such sums as may be necessary for the expenses of the winding up¹, declare and distribute dividends among the creditors in respect of the debts which they have respectively proved²; and the liquidator must give notice of his intention to declare and distribute a dividend³. Where the liquidator has declared a dividend, he must give notice of it to the creditors, stating how the dividend is proposed to be distributed; and the notice must contain such particulars with respect to the company, and to its assets and affairs, as will enable the creditors to comprehend the calculation of the amount of the dividend and the manner of its distribution⁴.

1 See para 805 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.180(1). As to proof of debts see para 749 et seq ante.

3 Ibid r 4.180(2). See further paras 815, 820 post.

4 Ibid r 4.180(3). See further para 820 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/814. Division of unsold assets.

814. Division of unsold assets.

The liquidator may¹, with the permission of the liquidation committee², divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold³.

1 le without prejudice to the provisions of the Insolvency Act 1986 about disclaimers: see para 866 et seq post.

2 As to the liquidation committee see para 629 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.183.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

814 Division of unsold assets

TEXT AND NOTES--SI 1986/1925 r 4.183 amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/815. Notice of intended dividend.

815. Notice of intended dividend.

Before declaring a dividend, the liquidator must give notice¹ of his intention to do so to all creditors² whose addresses are known to him and who have not proved their debts³ and where a member state liquidator has been appointed in relation to the insolvent company, to that person⁴. Before declaring a first dividend, the liquidator must, unless he has previously by public advertisement invited creditors to prove their debts, give notice of the intended dividend by public advertisement⁵. Any such notice must specify a date ('the last date for proving') up to which proofs may be lodged; the date must be the same for all creditors, and not less than 21 days from that of the notice⁶. The liquidator must in the notice state his intention to declare a dividend, specified as interim or final, as the case may be, within the period of four months from the last date for proving⁷.

1 As to the giving of notice see para 1088 post.

2 For these purposes, 'creditors' means those creditors of the company of whom the liquidator is aware, or who are identified in the company's statement of affairs: Insolvency Rules 1986, SI 1986/1925, r 11.1(2). For these purposes, a member state liquidator is deemed to be a creditor: r 11.1(3) (added by SI 2002/1307). For the meaning of 'member state liquidator' see para 460 note 15 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 11.2(1)(a) (r 11.2(1) substituted by SI 2002/1307).

4 Insolvency Rules 1986, SI 1986/1925, r 11.2(1)(a) (as substituted: see note 3 supra).

5 Ibid r 11.2(1A) (added by SI 1987/1919).

6 Insolvency Rules 1986, SI 1986/1925, r 11.2(2) (amended by SI 1987/1919).

7 Insolvency Rules 1986, SI 1986/1925, r 11.2(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

815 Notice of intended dividend

TEXT AND NOTES--SI 1986/1925 r 7.45 substituted by r 7.45A: SI 2010/686.

TEXT AND NOTE 5--SI 1986/1925 r 11.2(1A) substituted, r 11(2)(1B) added: SI 2009/642. SI 1986/1925 r 11.2(1C) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/816. Failure of creditor to prove before dividend declared.

816. Failure of creditor to prove before dividend declared.

A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but:

1189 (1) when he has proved that debt, he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive¹; and

1190 (2) any dividend or dividends so payable must be paid before that money is applied to the payment of any such further dividend².

1 Insolvency Rules 1986, SI 1986/1925, r 4.182(2)(a). See also para 776 ante. As to the position where a proof is altered after the payment of a dividend see para 822 post.

2 Ibid r 4.182(2)(b).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/817. Final admission or rejection of proofs.

817. Final admission or rejection of proofs.

The liquidator must, within seven days from the last date for proving¹, deal with every creditor's proof, in so far as not already dealt with, by admitting or rejecting it in whole or in part, or by making such provision as he thinks fit in respect of it². The liquidator is not obliged, however, to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit³. In the declaration of a dividend no payment is to be made more than once by virtue of the same debt⁴. Save where the right to a dividend is assigned⁵, where a creditor has proved and a member state liquidator⁶ has proved in relation to the same debt, payment may be made only to the creditor⁷.

1 For the meaning of 'the last date for proving' see para 815 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 11.3(1). As to proof of debts generally see para 749 et seq ante.

3 Ibid r 11.3(2).

4 Ibid r 11.3(3) (added by SI 2002/1307).

5 Ie under the Insolvency Rules 1986, SI 1986/1925, r 11.11: see para 824 post.

6 For the meaning of 'member state liquidator' see para 460 note 15 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 11.3(4) (added by SI 2002/1307).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/818. Postponement or cancellation of dividend.

818. Postponement or cancellation of dividend.

If, in the period of four months from the last date for proving¹ referred to in the notice of an intended dividend², the liquidator has rejected a proof in whole or in part and application is made to the court for his decision to be reversed or varied, or application is made to the court for the liquidator's decision on a proof to be reversed or varied³, or for a proof to be expunged, or for a reduction of the amount claimed⁴, the liquidator may postpone or cancel the dividend⁵.

1 For the meaning of 'the last date for proving' see para 815 ante.

2 I.e. the four-month period referred to in the Insolvency Rules 1986, SI 1986/1925, r 11.2(3): see para 815 ante.

3 See para 786 ante.

4 See para 788 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 11.4.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/819. Decision to declare dividend.

819. Decision to declare dividend.

If the liquidator has not, in the four-month period from the last date for proving¹ referred to in the notice of an intended dividend², had cause to postpone or cancel the dividend³, he must within that period proceed to declare the dividend of which he gave notice⁴. Except with the leave of the court, the liquidator may not declare the dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof⁵, or to expunge a proof or to reduce the amount claimed⁶; and, if the court gives such leave, the liquidator must make such provision in respect of the proof in question as the court directs⁷.

In the calculation and distribution of a dividend the liquidator must make provision:

- 1191 (1) for any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs⁸;
- 1192 (2) for any debts which are the subject of claims which have not yet been determined⁹; and
- 1193 (3) for disputed proofs and claims¹⁰.

1 For the meaning of 'the last date for proving' see para 815 ante.

2 I.e. the four-month period referred to in the Insolvency Rules 1986, SI 1986/1925, r 11.2(3): see para 815 ante.

3 See para 818 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 11.5(1). Dividends are payable on the full amount of the proof without any deduction for payments made in reduction of the debt by third persons: *Re Ligoniel Spinning Co, ex p Bank of England* [1900] 1 IR 324.

5 See para 786 ante.

6 See para 788 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 11.5(2).

8 Ibid r 4.182(1)(a).

9 Ibid r 4.182(1)(b).

10 Ibid r 4.182(1)(c).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

819 Decision to declare dividend

NOTE 5--An application is 'pending' if it has been lodged with the court, even if it has not been served on the liquidator: *Lomax Leisure Ltd (in liquidation) v Miller* [2007] EWHC 2508 (Ch), [2007] All ER (D) 164 (Oct).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/820. Notice of declaration.

820. Notice of declaration.

The liquidator must give notice¹ of dividend to all creditors who have proved their debts² and where a member state liquidator³ has been appointed in relation to the company, to that person⁴; and the notice must include the following particulars relating to the winding up and the administration of the company's estate:

- 1194 (1) amounts realised from the sale of assets, indicating, so far as practicable, amounts raised by the sale of particular assets⁵;
- 1195 (2) payments made by the liquidator in the administration of the company's assets⁶;
- 1196 (3) provision, if any, made for unsettled claims, and funds, if any, retained for particular purposes⁷;
- 1197 (4) the total amount to be distributed, and the rate of dividend⁸;
- 1198 (5) whether, and if so when, any further dividend is expected to be declared⁹.

The dividend may be distributed simultaneously with the notice declaring it¹⁰.

Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection¹¹; and, where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend must be indorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose¹².

1 As to the giving of notice see para 1088 post.

2 Insolvency Rules 1986, SI 1986/1925, r 11.6(1)(a) (r 11.6(1)(a), (b) substituted by SI 2002/1307).

3 For the meaning of 'member state liquidator' see para 460 note 15 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 11.6(1)(b) (as substituted: see note 2 supra).

5 Ibid r 11.6(2)(a). As to the distribution of assets see further para 813 ante.

6 Ibid r 11.6(2)(b).

7 Ibid r 11.6(2)(c).

8 Ibid r 11.6(2)(d).

9 Ibid r 11.6(2)(e).

10 Ibid r 11.6(3).

11 Ibid r 11.6(4).

12 Ibid r 11.6(5). As to proofs in respect of negotiable instruments see para 790 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

820 Notice of declaration

NOTE 9--See SI 1986/1925 r 11.6(2A) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/821. Notice of no, or no further, dividend.

821. Notice of no, or no further, dividend.

If the liquidator gives notice¹ to creditors that he is unable to declare any dividend or, as the case may be, any further dividend², the notice must contain a statement to the effect either that no funds have been realised, or that the funds have already been distributed or used, or allocated for defraying the expenses of administration³.

1 As to the giving of notice see para 1088 post.

2 See para 820 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 11.7. As to the expenses of the administration see para 810 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/822. Proof altered after payment of dividend.

822. Proof altered after payment of dividend.

If, after payment of dividend, the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive¹. Any dividend or dividends so payable must be paid before the money for the time being available for the payment of any further dividend is applied to the payment of any such further dividend².

If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount of it is reduced³, the creditor is liable to repay to the liquidator, for the credit of the company's assets, any amount overpaid by way of dividend⁴.

1 Insolvency Rules 1986, SI 1986/1925, r 11.8(1). As to the position where a creditor fails to prove before the declaration of a dividend see para 816 ante.

2 Ibid r 11.8(2).

3 See para 788 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 11.8(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/823. Secured creditors.

823. Secured creditors.

Where a creditor revalues his security at a time when a dividend has been declared¹, then, if the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor must forthwith repay to the liquidator, for the credit of the company's assets, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security².

If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the liquidator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security; but the creditor is not entitled to disturb any dividend declared, whether or not distributed, before the date of the revaluation³.

If a creditor contravenes any provision⁴ relating to the valuation of securities, the court may, on the application⁵ of the liquidator, order that the creditor be wholly or partly disqualified from participation in any dividend⁶.

1 Insolventcy Rules 1986, SI 1986/1925, r 11.9(1). As to revaluation by a creditor of his security see para 799 ante.

2 Ibid r 11.9(2).

3 Ibid r 11.9(3).

4 Ie any provision of the Insolventcy Act 1986 or the Insolventcy Rules 1986, SI 1986/1925 (as amended): see para 799 et seq ante.

5 As to the making of applications see para 1055 et seq post.

6 Insolventcy Rules 1986, SI 1986/1925, r 11.10.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/824. Assignment of right to dividend.

824. Assignment of right to dividend.

If a person entitled to a dividend gives notice¹ to the liquidator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the liquidator must pay the dividend to that other accordingly². Such a notice must specify the name and address of the person to whom payment is to be made³.

1 As to the giving of notice see para 1088 post.

2 Insolvency Rules 1986, SI 1986/1925, r 11.11(1).

3 Ibid r 11.11(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/825. Preferential creditors.

825. Preferential creditors.

The provisions relating to dividends¹ apply with respect to any distribution made in the winding up to preferential creditors², with such adaptations as are appropriate considering that such creditors are of a limited class³, save that the notice of the intended dividend by the liquidator⁴, where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential; and public advertisement of the intended dividend need only be given if the liquidator thinks fit⁵.

¹ ie the Insolvency Rules 1986, SI 1986/1925, rr 11.1-11.13 (as amended): see paras 815 et seq ante, 826 post.

² See para 763 et seq ante.

³ Insolvency Rules 1986, SI 1986/1925, r 11.12(1).

⁴ ie the notice under ibid r 11.2: see para 815 ante.

⁵ Ibid r 11.12(2) (amended by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/826. Debt payable at future time.

826. Debt payable at future time.

Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend¹, he is entitled to dividend equally with other creditors, but subject to a reduction in respect of his admitted proof². Other creditors are not entitled to interest out of surplus funds³ until any creditor to whom these provisions apply has been paid the full amount of his debt⁴.

1 As to proof of debts payable at a future time see para 796 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 11.13(1). For the purpose of dividend, and for no other purpose, the amount of the creditor's admitted proof, or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof, must be reduced by a percentage calculated as follows:

$$\frac{I \times M}{12}$$

where I is 5%, and M is the number of months (expressed, if need be, as, or as including, fractions of months) between the declaration of dividend and the date when payment of the creditor's debt would otherwise be due: r 11.13(2) (amended by SI 1987/1919).

3 See under the Insolvency Act 1986 s 189(2): see para 827 post.

4 Insolvency Rules 1986, SI 1986/1925, r 11.13(3). As to r 11.13 (as amended) generally see *Re Park Air Services plc*, *Christopher Moran Holdings Ltd v Bairstow* [2000] 2 AC 172, [1999] 1 All ER 673, HL.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

826 Debt payable at future time

NOTE 2--For 'a percentage calculated as follows' read 'by applying the following formula'; the formula is now $X/1.05^n$ where 'X' is the value of the admitted proof, and 'n' is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form: SI 1986/1925 r 11.13(2) (r 11.13(2), substituted, r 11.13(3) added by SI 2005/527). 'Relevant date' means, in the case of a winding up which was not immediately preceded by an administration, the date that the company went into liquidation and, in the case of a winding up which was immediately preceded by an administration, the date that the company entered administration: SI 1986/1925 r 11.13(3)(a), (b) (as so added).

TEXT AND NOTES 3, 4--SI 1986/1925 r 11.13(3) revoked: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/827. Interest on debts.

827. Interest on debts.

In a winding up, interest is payable at the official rate¹ on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder². Any surplus remaining after the payment of the debts proved in a winding up must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation³. All such interest ranks equally, whether or not the debts on which it is payable rank equally⁴.

1 The official rate of interest payable in respect of any debt is whichever is the greater of: (1) the rate specified in the Judgments Act 1838 s 17 (as amended) on the day on which the company went into liquidation; and (2) the rate applicable to that debt apart from the winding up: Insolvency Act 1986 s 189(4). The rate currently specified is 8% per annum: Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2). For the meaning of 'go into liquidation' see para 9 note 3 ante.

2 Insolvency Act 1986 s 189(1).

3 Ibid s 189(2). This is apparently subject to the provision in the Insolvency Rules 1986, SI 1986/1925, r 11.13(3) (see para 826 ante) in favour of creditors with debts payable at a future time.

4 Insolvency Act 1986 s 189(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/828. Refusal by liquidator to pay dividend.

828. Refusal by liquidator to pay dividend.

No action lies against the liquidator for a dividend; but, if he refuses to pay a dividend, the court may, if it thinks fit, order¹ him to pay it and also to pay out of his own money interest on the dividend² from the time when it was withheld³, and the costs of the proceedings in which the order to pay is made⁴.

1 As to the making of applications see para 1055 et seq post.

2 I.e. at the rate for the time being specified in the Judgments Act 1838 s 17 (as amended): Insolvency Rules 1986, SI 1986/1925, r 4.182(3)(a). The rate currently specified is 8% per annum: Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2).

3 Insolvency Rules 1986, SI 1986/1925, r 4.182(3)(a).

4 Ibid r 4.182(3)(b).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/829. Final distribution.

829. Final distribution.

When the liquidator has realised all the company's assets or so much of them as can, in his opinion, be realised without needlessly protracting the liquidation, he must give notice¹, either of his intention to declare a final dividend, or that no dividend, or further dividend, will be declared². The notice must contain all such particulars as are required³ and must require claims against the assets to be established by a date specified in the notice⁴. After that date, the liquidator must defray any outstanding expenses of the winding up⁵ out of the assets; and, if he intends to declare a final dividend, he must declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved⁶. The court may, on the application⁷ of any person, postpone the date specified in the notice⁸.

1 Ie under the Insolvency Rules 1986, SI 1986/1925, Pt 11 (rr 11.1-11.13) (as amended): see para 815 et seq ante.

2 Ibid r 4.186(1).

3 Ie under ibid Pt 11.

4 Ibid r 4.186(2).

5 See para 805 et seq ante.

6 Insolvency Rules 1986, SI 1986/1925, r 4.186(3).

7 As to the making of applications see para 1055 et seq post.

8 Insolvency Rules 1986, SI 1986/1925, r 4.186(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

829 Final distribution

TEXT AND NOTES 5, 6--SI 1986/1925 r 4.186(3) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iii) Distribution of Assets among Creditors and Employees/830. Power to make over assets to employees.

830. Power to make over assets to employees.

On the winding up of a company¹ the liquidator may make any payment which the company has, before the commencement of the winding up², decided to make under the provisions giving power to provide for employees or former employees³ on cessation or transfer of business⁴. The power which a company may exercise by virtue only of those provisions may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up, the exercise of that power has been sanctioned by such a resolution of the company as would be required of the company itself⁵ before that commencement⁶.

Any payment which may be made by a company under these provisions may be made out of the company's assets which are available to the members on the winding up⁷.

On a winding up by the court, the exercise by the liquidator of his powers under these provisions is subject to the court's control; and any creditor or contributory⁸ may apply to the court with respect to any exercise or proposed exercise of the power⁹.

1 Ie whether in a winding up by the court (see para 438 et seq ante) or a voluntary winding up (see para 939 et seq post).

2 As to the commencement of the winding up see para 489 ante.

3 Ie the provision contained in the Companies Act 1985 s 719.

4 Insolvency Act 1986 s 187(1). The provisions of s 187(1), (2) (see the text and notes 5-6 infra) have effect notwithstanding anything in any rule of law or in s 107 (property of company after satisfaction of liabilities to be distributed among members: see para 1009 post): s 187(5). Section 187 does not apply in the case of a winding up in relation to a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

5 Ie under the Companies Act 1985 s 719(3).

6 Insolvency Act 1986 s 187(2). See also note 4 supra. For these purposes, the Companies Act 1985 s 719(3) (b) is deemed to have been omitted and any other requirement applicable to the exercise by the company of the power referred to in the text is deemed to have been met: Insolvency Act 1986 s 187(2).

7 Ibid s 187(3). See also note 4 supra.

8 For the meaning of 'contributory' see para 703 ante.

9 Insolvency Act 1986 s 187(4). See also note 4 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

830 Power to make over assets to employees

TEXT AND NOTE 4--Insolvency Act 1986 s 187(1) amended: Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194.

TEXT AND NOTES 5, 6--Insolvency Act 1986 s 187(2) substituted: SI 2007/2194. Insolvency Act 1986 s 187(2) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iv) Distribution of Assets among Contributories/831. Adjusting rights of contributories.

(iv) Distribution of Assets among Contributories

831. Adjusting rights of contributories.

The court must adjust the rights of the contributories¹ among themselves and distribute any surplus among the persons entitled² to it³. Only the rights of contributories as contributories may be adjusted under this provision; hence it does not enable directors who are contributories to enforce against persons who also are contributories rights which have nothing to do with their position as contributories⁴. In a winding up, past and present members are liable to contribute to the company's assets to an extent sufficient, among other purposes, for the adjustment of the contributories' rights among themselves⁵.

The contributories obtain nothing until the expenses properly incurred in the winding up have been paid and the company's debts and liabilities have been discharged in full⁶. A sum due to a person in his character of a member⁷ by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and non-member creditors, but may be taken into account for the purposes of the final adjustment of contributories' rights among themselves⁸.

1 For the meaning of 'contributory' see para 703 ante.

2 Insolvency Act 1986 s 154. Distribution requires the court's sanction in every case: *Re Phoenix Oil and Transport Co Ltd (No 2)* [1958] Ch 565, [1958] 1 All ER 158.

3 *Griffith v Paget* (1877) 5 ChD 894 (subsequent proceedings (1877) 6 ChD 511); *Wall v London and Northern Assets Corpn* [1898] 2 Ch 469, CA; *Re North West Argentine Co* [1900] 2 Ch 882; *Liverpool and District Hospital for Diseases of the Heart v A-G* [1981] Ch 193, [1981] 1 All ER 994.

4 *Re Alexandra Palace Co* (1883) 23 ChD 297 at 300 (rights between a tortfeasor and creditors and contributories); *Addison's Case* (1875) LR 20 Eq 620 (contracts by some contributories to indemnify the rest). Rights against a contributory in some other capacity may be enforced only in an action: see para 715 ante.

5 See the Insolvency Act 1986 s 74(1); and paras 704, 715 ante.

6 See para 804 et seq ante. As to a landlord's right to have a sum set aside prior to distribution to shareholders to meet future rent see para 759 ante.

7 This includes a past member: *Re Consolidated Goldfields of New Zealand Ltd* [1953] Ch 689, [1953] 1 All ER 791.

8 See the Insolvency Act 1986 s 74(2)(f); and para 719 ante. See also *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iv) Distribution of Assets among Contributories/832. Distribution according to nominal capital.

832. Distribution according to nominal capital.

Unless the memorandum or articles otherwise provide, and subject to the terms on which any capital has been issued, the company's surplus assets¹ are divided and losses are borne in proportion to the nominal amounts of the shares and not to the sums paid up; and, where some shareholders have paid up more than others, the court adjusts the amounts until all have paid up in the same proportion; and the surplus thus arrived at is then distributed in proportion to the nominal amounts of the shares².

The rights may be adjusted by making larger returns to those who have paid larger amounts³, or by making calls⁴. The articles may, however, be so framed as to prevent calls being made on the holders of partly paid shares to equalise the amounts paid up⁵.

A provision in the articles as to how dividends are to be distributed while the company is a going concern does not in itself govern or affect the distribution of surplus assets in a winding up⁶.

¹ 'Surplus assets' as used in the company's regulations may mean either what remains after paying the expenses of the winding up and debts, or after making those payments and returning the paid-up capital to the shareholders: *Re Ramel Syndicate Ltd* [1911] 1 Ch 749. See also *Re New Transvaal Co* [1896] 2 Ch 750; *Re Peabody Gold Mining Corp Ltd* (1897) 42 Sol Jo 97; *Re Anglo-Continental Corp of Western Australia* [1898] 1 Ch 327; *Re Mutoscope and Biograph Syndicate* [1899] 1 Ch 896; *Re Crichton's Oil Co* [1902] 2 Ch 86 at 93, CA; *Re Welsh Whisky Distillery Co Ltd* (1900) 16 TLR 246; *Re Dunstable Portland Cement Co Ltd* (1932) 48 TLR 223.

² *Re Hodge's Distillery Co, ex p Maude* (1870) 6 Ch App 51; *Birch v Cropper, Re Bridgewater Navigation Co Ltd* (1889) 14 App Cas 525 at 543, HL; *Re Driffeld Gas Light Co* [1898] 1 Ch 451; *Re Eclipse Gold Mining Co* (1874) LR 17 Eq 490 (new capital); *Re Wakefield Rolling Stock Co* [1892] 3 Ch 165; *Oakbank Oil Co v Crum* (1882) 8 App Cas 65, HL; *Re Syston and Thurmaston Gas, Light and Coke Co Ltd* [1937] 2 All ER 322. In the absence of agreement by all the shareholders or through the machinery of modification clauses, the distribution must be in accordance with the shareholders' legal rights: *Re North West Argentine Rly Co* [1900] 2 Ch 882 (where Wright J distinguished his former decision in *Re Beeston Pneumatic Tyre Co Ltd* (1898) 14 TLR 338, which cannot be supported). The cases of *Somes v Currie* (1855) 1 K & J 605 and *Sheppard v Scinde, Punjab and Delhi Rly Co* (1887) 56 LJ Ch 866, CA (affd (1889) 60 LT 641, HL) were decided on special circumstances.

³ *Re Hodge's Distillery Co, ex p Maude* (1870) 6 Ch App 51; *Re Wakefield Rolling Stock Co* [1892] 3 Ch 165; *Birch v Cropper, Re Bridgewater Navigation Co Ltd* (1889) 14 App Cas 525, HL; *Re Driffeld Gas Light Co* [1898] 1 Ch 451; *Re Weymouth and Channel Islands Steam Packet Co* [1891] 1 Ch 66, CA.

⁴ *Re Anglo-Continental Corp of Western Australia* [1898] 1 Ch 327; *Welton v Saffery* [1897] AC 299, HL; *Re Anglesea Colliery Co* (1866) 1 Ch App 555; and see *Re Provision Merchants' Co Ltd* (1872) 26 LT 862; *Re Sheppard's Corn Malting Co Ltd, ex p Lowenfeld* (1893) 70 LT 3, CA. See also the Insolvency Act 1986 s 74(1); and para 704 ante.

⁵ *Re Kinatan (Borneo) Rubber Ltd* [1923] 1 Ch 124; *Re Holyford Mining Co* (1869) IR 3 Eq 208; *Re New Transvaal Co* [1896] 2 Ch 750; *Re Peabody Gold Mining Corp Ltd* (1897) 42 Sol Jo 97; and see *Re Eclipse Gold Mining Co* (1874) LR 17 Eq 490; *Re Coed Madog Slate Co* [1877] WN 190; cf *Re Provision Merchants' Co Ltd* (1872) 26 LT 862.

⁶ *Re Driffeld Gas Light Co* [1898] 1 Ch 451; *Re London Indiarubber Co* (1868) LR 5 Eq 519; cf *Simpson v Palace Theatre Ltd* (1893) 69 LT 70, CA (where a scheme for voluntary liquidation and reconstruction was held to be invalid because it did not provide for a pro rata division among all the shareholders); and see *Griffith v Paget* (1877) 6 ChD 511. Where under the articles one shareholder (the Crown) received no dividend, but was entitled on a winding up to an equivalent sum before a general distribution of surplus assets, that sum was held to be the amount received by the other shareholders less income tax, since the sum itself was not taxable: *Re Home Grown Sugar Ltd* [1938] Ch 219, [1938] 1 All ER 85.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iv) Distribution of Assets among Contributories/833. Preference shareholders.

833. Preference shareholders.

Articles of association¹ may provide that in a winding up preference shareholders are to be repaid capital before it is repaid to other shareholders, or that arrears of preference dividend are to be paid to the preference shareholders before repayment of capital is made to other shareholders; the arrears of dividend may be limited to those declared and remaining unpaid² or may include all arrears of dividend whether declared or not, in which case the amount of the arrears of dividend will have priority without reference to the profits made by the company while a going concern³. Where arrears are payable, they are payable without any deduction on account of income tax⁴, and, in the absence of express provision in the articles, they are to be calculated up to the date of the winding up but not up to the date of repayment⁵.

1 As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

2 *Re Roberts and Cooper Ltd* [1929] 2 Ch 383; *Re W Foster & Son Ltd* [1942] 1 All ER 314; *Re Wood, Skinner & Co Ltd* [1944] Ch 323; *Re Catalinas Warehouses and Mole Co Ltd* [1947] 1 All ER 51; and see *Re Bangor and Portmadoc Slate and Slab Co* (1875) LR 20 Eq 59. As to preference shares see COMPANIES vol 15 (2009) PARA 1059.

3 *Re Springbok Agricultural Estates Ltd* [1920] 1 Ch 563, following dicta in *Re New Chinese Antimony Co Ltd* [1916] 2 Ch 115, and not following *Re WJ Hall & Co Ltd* [1909] 1 Ch 521; *Re Walter Symons Ltd* [1934] Ch 308; *Re F de Jong & Co Ltd* [1946] Ch 211, [1946] 1 All ER 556, CA; *Re EW Savory Ltd* [1951] 2 All ER 1036; *Re Wharfedale Brewery Co Ltd* [1952] Ch 913, [1952] 2 All ER 635 (preference shareholders not limited to the amount of profits earned out of which a preference dividend could have been declared).

4 *Re Dominion Tar and Chemical Co Ltd* [1929] 2 Ch 387; cf *Re Home Grown Sugar Ltd* [1938] Ch 219, [1938] 1 All ER 85.

5 *Re EW Savory Ltd* [1951] 2 All ER 1036 at 1040.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iv) Distribution of Assets among Contributories/834. Shares allotted at a discount.

834. Shares allotted at a discount.

Any discount on shares illegally allotted at a discount is treated as capital unpaid, and may be so regarded in adjusting accounts, or may be called up to adjust the rights of the contributories¹.

¹ *Welton v Saffery* [1897] AC 299, HL; *Re Weymouth and Channel Islands Steam Packet Co* [1891] 1 Ch 66, CA. As to the prohibition on the allotment of shares at a discount see COMPANIES vol 15 (2009) PARA 1111. For the meaning of 'contributory' see para 703 ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iv) Distribution of Assets among Contributories/835. Bankrupt shareholder.

835. Bankrupt shareholder.

Where a company has proved in the bankruptcy of a shareholder for the amount unpaid on the shares but not called up, and received a dividend less than 100 pence in the pound, the shares are not treated as fully paid for the purposes of the trustee's receiving a share of the surplus assets in the subsequent winding up of the company, until the other holders of fully paid shares have received dividends sufficient to reduce the amount paid on their shares to the amount which has in fact been paid on the bankrupt's shares¹.

¹ *Re West Coast Gold Fields Ltd, Rowe's Trustee's Claims* [1906] 1 Ch 1, CA.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/ (iv) Distribution of Assets among Contributories/836. Money received in advance of calls.

836. Money received in advance of calls.

Where inequality in the amounts paid up arises from some shareholders having made payments in advance of calls, those shareholders, for the purpose of equalising, are entitled to be repaid the amount advanced by them with interest at the agreed rate up to the date of repayment before any payment is made in respect of the other shares ranking *pari passu* with their shares in repayment of capital¹. The same principle applies where the company issues both fully paid and partly paid shares².

1 *Re Exchange Drapery Co* (1888) 38 ChD 171; *Re Wakefield Rolling Stock Co* [1892] 3 Ch 165.

2 *Re Hodge's Distillery Co, ex p Maude* (1870) 6 Ch App 51.

UPDATE

438-938 Winding Up by the Court

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837. Surplus after refunding paid-up capital.

Where, after repayments to the shareholders of all paid-up capital, there is still a surplus remaining for distribution, then, subject to the provisions of the memorandum¹ or articles of association and the terms of issue², the surplus, so far as it represents capital, is divisible in proportion to the nominal amount of the shares, whether they are preference or ordinary shares, and whether at the winding up they were partly or fully paid up³.

The articles may, however, be so framed that the rule of division mentioned above is expressly or impliedly excluded. Thus where the preferential right to repayment of capital attached to the preference shares is, on the construction of the articles, meant to delimit the whole right of the holders of the preference shares and not merely to give them priority as to repayment, as is *prima facie* the case⁴, they are not entitled to share further in the surplus assets after repayment of capital⁵. Subject to any priority as to payment of arrears of dividend⁶, the surplus, so far as it represents undivided profits, must be divided in the same way as capital⁷, unless the articles or terms of issue indicate that it is to be divisible as if it were profit available for dividend⁸.

Unless the articles so provide, the holders of shares issued at a premium are not entitled to have the premium repaid in a winding up⁹.

Shareholders receive their distributions in the form of a distribution of assets which, apart from statutory provisions¹⁰, are capital in their hands¹¹.

The regulations of most companies authorise the distribution of surplus assets in specie¹².

1 *Re Duncan Gilmour & Co Ltd, The Company v Inman* [1952] 2 All ER 871 (where the memorandum defines the rights exhaustively, articles cannot be looked at to vary it); *Liverpool and District Hospital for Diseases of the Heart v A-G* [1981] Ch 193, [1981] 1 All ER 994 (memorandum of charitable corporation providing for cy-près scheme). As to a company's memorandum see COMPANIES vol 14 (2009) PARA 104.

2 *Re Mutoscope and Biograph Syndicate* [1899] 1 Ch 896; *Re Duncan Gilmour & Co Ltd, The Company v Inman* [1952] 2 All ER 871. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

3 *Birch v Cropper, Re Bridgewater Navigation Co Ltd* (1889) 14 App Cas 525, HL; *Re Madame Tussaud & Sons Ltd* [1927] 1 Ch 657; *Re Espuela Land and Cattle Co* [1909] 2 Ch 187; *Re Fraser and Chalmers Ltd* [1919] 2 Ch 114; *Anglo-French Music Co v Nicoll* [1921] 1 Ch 386; *Re W Foster & Son Ltd* [1942] 1 All ER 314; *Re Syston and Thurmaston Gas, Light and Coke Co Ltd* [1937] 2 All ER 322.

4 *Scottish Insurance Corp Ltd v Wilsons and Clyde Coal Co Ltd* [1949] AC 462, [1949] 1 All ER 1068, HL (overruling *Re William Metcalfe & Sons Ltd* [1933] Ch 142, CA, and following the rule laid down in *Will v United Lankat Plantations Co Ltd* [1914] AC 11, HL, by which the attachment of preferential rights to dividend is *prima facie* an exhaustive statement of the rights of preference shareholders); *Re Isle of Thanet Electric Supply Co Ltd* [1950] Ch 161, [1949] 2 All ER 1060, CA; *Re Templeton* (1950) 100 L Jo 609; *Re John Smith's Tadcaster Brewery Co Ltd, John Smith's Tadcaster Brewery Co Ltd v Gresham Life Assurance Society Ltd* [1952] 2 All ER 751 (revsd on another point [1953] Ch 308, [1953] 1 All ER 518, CA). Cf *Re Old Silkstone Collieries Ltd* [1954] Ch 169, [1954] 1 All ER 68, CA (where special rights in favour of preference stockholders had been created on previous reductions of capital).

5 *Re National Telephone Co* [1914] 1 Ch 755; *Collaroy Co Ltd v Giffard* [1928] Ch 144, discussing and explaining *Birch v Cropper, Re Bridgewater Navigation Co Ltd* (1889) 14 App Cas 525, HL; *Re Espuela Land and Cattle Co* [1909] 2 Ch 187; *Re Fraser and Chalmers Ltd* [1919] 2 Ch 114; *Anglo-French Music Co v Nicoll* [1921] 1 Ch 386; *Re John Dry Steam Tugs Ltd* [1932] 1 Ch 594; *Re National Telephone Co* [1914] 1 Ch 755 at 773. See

also *Scottish Insurance Corpn Ltd v Wilson and Clyde Coal Co Ltd* [1949] AC 462, [1949] 1 All ER 1068, HL; *Re Isle of Thanet Electricity Supply Co Ltd* [1950] Ch 161, [1949] 2 All ER 1060, CA; *Re John Smith's Tadcaster Brewery Co Ltd, John Smith's Tadcaster Brewery Co Ltd v Gresham Life Assurance Society Ltd* [1952] 2 All ER 751 (revsd on another point [1953] Ch 308, [1953] 1 All ER 518, CA). Cf *Re Old Silkstone Collieries Ltd* [1954] Ch 169, [1954] 1 All ER 68, CA (cited in note 4 supra).

6 As to the priority of payment of arrears of dividend see para 833 ante.

7 See *Bishop v Smyrna and Cassaba Rly Co* [1895] 2 Ch 265; *Re Crichton's Oil Co* [1902] 2 Ch 86, CA (where the subject is fully discussed); *Re Accrington Corpn Steam Tramways Co* [1909] 2 Ch 40; *Re Syston and Thurmaston Gas, Light and Coke Co Ltd* [1937] 2 All ER 322 (statutory company). See also *Dimbula Valley (Ceylon) Tea Co Ltd v Laurie* [1961] Ch 353, [1961] 1 All ER 769 (where the ordinary shareholders were in a position to distribute or capitalise all profits for their own advantage, notwithstanding that the preference shareholders would have shared in them in a winding up).

8 *Re Bridgewater Navigation Co* [1891] 2 Ch 317, CA; *Bishop v Smyrna and Cassaba Rly Co* [1895] 2 Ch 265; cf *Re Odessa Waterworks Co Ltd* (1897) [1901] 2 Ch 190n; *Re Madame Tussaud & Sons Ltd* [1927] 1 Ch 657; *Re A Harrison Ltd, Walker v Forshaw* (1951) 101 L Jo 331.

9 *Re Driffeld Gas Light Co* [1898] 1 Ch 451. As to the issue of shares at a premium see COMPANIES vol 15 (2009) PARA 1146.

10 The present taxation provisions are that all such receipts are disposals or part disposals for the purpose of capital gains tax: see the Taxation of Chargeable Gains Act 1992 s 122 (as amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) para 295.

11 *IRC v Burrell* [1924] 2 KB 52, CA; *IRC v Pollock and Peel Ltd* [1957] 2 All ER 483, [1957] 1 WLR 822, CA.

12 Where there is an agreement to distribute surplus assets in specie, the company is a trustee of them for the shareholders: *Re Strathblaine Estates Ltd* [1948] Ch 228, [1948] 1 All ER 162. Ad valorem stamp duty is not in practice charged on such distributions where they correspond with the shareholders' rights to surplus assets; but it is charged on distributions in specie while the company is a going concern (see *Associated British Engineering Ltd v IRC* [1941] 1 KB 15, [1940] 4 All ER 278; and COMPANIES vol 15 (2009) PARA 1420), the company being in the latter case not a trustee but a debtor in respect of the assets to be distributed. All such distributions are dispositions by the company for the purposes of capital gains tax: see the Taxation of Chargeable Gains Act 1992 s 122 (as amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) para 295.

UPDATE

438-938 Winding Up by the Court

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838. Application to court for order authorising return.

Where the liquidator intends to apply to the court for an order authorising a return of capital, the application must be accompanied by a list of the persons to whom the return is to be made¹. The list must include the same details of those persons as appears in the settled list of contributories², with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person³. Where the court makes an order authorising the return, it must send a sealed copy of the order to the liquidator⁴.

1 Insolvency Rules 1986, SI 1986/1925, r 4.221(1), (2). See *Re Phoenix Oil and Transport Co Ltd (No 2)* [1958] Ch 565, [1958] 1 All ER 158 (where the court refused to dispense with compliance with the analogous provisions contained in the Companies (Winding-up) Rules 1949, SI 1949/330, r 120 (revoked) where the liquidator was faced with inquiries before he could say among whom the surplus should be distributed). As to the making of applications see para 1055 et seq post.

2 As to the settled list of contributories see para 720 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.221(3).

4 Ibid r 4.221(4).

UPDATE

438-938 Winding Up by the Court

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839. Procedure for return.

The liquidator must inform each person to whom a return is made of the rate of return per share, and whether it is expected that any further return will be made¹. Any payments made by the liquidator by way of the return may be sent by post, unless for any reason another method of making the payment has been agreed with the payee².

1 Insolvency Rules 1986, SI 1986/1925, r 4.222(1).

2 Ibid r 4.222(2).

UPDATE

438-938 Winding Up by the Court

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840. Refunding by contributory.

A contributory who is aware that the liquidator has not provided for all the debts of the company may be ordered to repay money received by him in respect of surplus assets¹.

¹ See the Insolvency Act 1986 s 149(1); *Re Aidall Ltd* [1933] Ch 323, CA; and paras 741-743 ante.

UPDATE

438-938 Winding Up by the Court

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(v) Payment of Dividends to Creditors and Returns of Capital to Contributories of a Company

841. Payments.

Subject to the power of the Secretary of State to make payments by electronic transfer¹, in the case of a winding up by the court, the liquidator² must pay every dividend by payment instruments³ which must be prepared by the Department of Trade and Industry on the application of the liquidator and transmitted to him for distribution amongst the creditors⁴. In the case of a winding up by the court, the liquidator must pay every return of capital to contributories by payment instruments which must be prepared by the Department of Trade and Industry on application⁵.

In respect of any such application made by the liquidator⁶, the Secretary of State, if requested to do so by the liquidator, may, at his discretion, as an alternative to the issue of payment instruments, make payment by electronic transfer to the persons to whom the liquidator would otherwise deliver payment instruments⁷, or make the payment which is the subject of the application to the liquidator by electronic transfer⁸.

Any such application for a payment instrument or payment by electronic transfer must be made by the liquidator on a form obtainable from the Department of Trade and Industry for the purpose or on a form which is substantially similar⁹.

In the case of a winding up by the court, the liquidator must enter the total amount of every dividend and of every return to contributories that he desires to pay under these provisions in the records to be kept¹⁰ by him in one sum¹¹.

On the liquidator vacating office, he must send to the Department of Trade and Industry any valid unclaimed or undelivered payment instruments for dividends or returns to contributories after indorsing them with the word 'cancelled'¹².

1 Ie pursuant to Insolvency Regulations 1994, SI 1994/2507, reg 8(3A) (as added) (see the text and notes 6-8 infra). As to the Secretary of State see para 11 note 10 ante.

2 For the meaning of 'liquidator' see para 595 note 1 ante.

3 For the meaning of 'payment instrument' see para 604 note 3 ante.

4 Insolvency Regulations 1994, SI 1994/2507, reg 8(A1), (1) (reg 8(A1) added by SI 2000/485). The application must be sent to Department of Trade and Industry, The Insolvency Service, PO Box 3690, Birmingham, B2 4UY: Insolvency Regulations 1994, SI 1994/2507, reg 3(3).

5 Ibid reg 8(2). As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

6 Ie under ibid reg 8(1)-(3).

7 Ibid reg 8(3A)(a) (reg 8(3A) added by SI 2000/485).

8 Insolvency Regulations 1994, SI 1994/2507, reg 8(3A)(b) (as added: see note 7 supra).

9 Ibid reg 8(4) (amended by SI 2000/485).

10 le under the Insolvency Regulations 1994, SI 1994/2507, reg 10: see para 595 ante.

11 Ibid reg 8(5).

12 Ibid reg 8(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

841 Payments

NOTE 4--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1994/2507 reg 3(3) (amended by SI 2007/3224).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(12) DISTRIBUTION OF ASSETS/(v) Payment of Dividends to Creditors and Returns of Capital to Contributories of a Company/842. Unclaimed share.

842. Unclaimed share.

An unclaimed share of assets paid into the Insolvency Services Account¹ cannot be attached by a creditor of the shareholder entitled to it by means of a third party debt order².

¹ As to the Insolvency Services Account and the Insolvency Services Investment Account see the Insolvency Act 1986 ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

² See *Spence v Coleman* [1901] 2 KB 199, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/843. In general.

(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS

(i) Transactions at an Undervalue and Preferences

843. In general.

Provision has been made in connection with transactions at an undervalue and preferences¹. The provisions apply in the case of a company where the company enters administration² or the company goes into liquidation³, and to all such transactions entered into on or after 29 December 1986⁴.

¹ See para 844 et seq post.

² Insolvency Act 1986 ss 238(1)(a), 239(1) (s 238(1)(a) substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 25). The substitution of this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes, in which circumstances the statutory provisions in connection with transactions at an undervalue and preferences apply where an administration order is made in respect of a company: Insolvency Act 1986 s 238(1)(a) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. As to special administration regimes see para 145 ante. As to entering administration see para 145 et seq ante.

³ Insolvency Act 1986 ss 238(1)(b), 239(1). For the meaning of 'go into liquidation' see para 9 note 3 ante.

⁴ As to the setting aside of transactions entered into before 29 December 1986 see para 434 note 3 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/844. Transaction at an undervalue.

844. Transaction at an undervalue.

A company enters into a transaction¹ with a person² at an undervalue if the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration³, or if the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company⁴.

The creation by a company of a charge over its assets in favour of a creditor is not a transaction at an undervalue⁵.

1 'Transaction' includes a gift, agreement or arrangement, and references to entering into a transaction are to be construed accordingly: Insolvency Act 1986 s 436. It has been held that, apart perhaps from the case of a mere gift, a transaction involves at least some element of dealing between the parties to the transaction: *Re Taylor Sinclair (Capital) Ltd (in liquidation)*, *Knights v Seymour Pierce Ellis Ltd* [2001] 2 BCLC 176.

2 The Insolvency Act 1986 s 238 (as amended) applies to any person: s 238(2). In *Re Paramount Airways Ltd (in administration)* [1993] Ch 223, [1992] 3 All ER 1, CA, it was held that the Insolvency Act 1986 s 238 was not territorially limited, or limited to British citizens. Since, however, the relief to be granted by the court is discretionary, the court would need to be satisfied at the hearing of the application that the defendant was sufficiently connected with England for it to be just and proper to make the order against him despite the foreign element: *Re Paramount Airways Ltd (in administration)* supra at 239-240 and at 11-12 per Sir Donald Nicholls V-C.

3 Insolvency Act 1986 s 238(4)(a). Section 238 does not specify from whom the consideration must move; and thus where the company agrees to sell an asset to A on terms that B enter into a collateral agreement, the consideration for the asset is the combined value of any consideration moving from A and that moving from B under the collateral agreement: *Phillips v Brewin Dolphin Bell Lawrie Ltd* [2001] UKHL 2, [2001] 1 All ER 673. In valuing the consideration, reality should be given precedence over speculation, and hence where value depends on future contingencies, the court may look to see what in fact happened: *Phillips v Brewin Dolphin Bell Lawrie Ltd* supra; *Ramlort Ltd v Reid* [2004] EWCA Civ 800. The consideration moving from and to the company need not necessarily be determined with certainty, provided that the court is able to conclude that one value is significantly less than the other: *Ramlort Ltd v Reid* supra.

4 Insolvency Act 1986 s 238(4)(b). See further note 3 supra.

5 *Re MC Bacon Ltd* [1990] BCLC 324, [1990] BCC 78; *National Bank of Kuwait v Menzies* [1994] 2 BCLC 306, sub nom *Menzies v National Bank of Kuwait SAK* [1994] BCC 119, CA; *Agricultural Mortgage Corp plc v Woodward* [1995] 1 BCLC 1, [1994] BCC 688, CA. Even where, as between transferor and transferee, full consideration is apparently given, there may be a transaction at an undervalue if the interests of a third party are prejudicially affected: *Agricultural Mortgage Corp plc v Woodward* supra (decided under the Insolvency Act 1986 s 423 (see para 854 post) where a husband who had charged his agricultural holding to the plaintiff as security exercised his powers under the Law of Property Act 1925 s 99 (see AGRICULTURAL LAND vol 1 (2008) PARA 421) to create a lease in favour of his wife, thus reducing the value of the freehold and placing the wife in a 'ransom position' whereby she could bargain with the bank for payment in consideration of her surrendering the lease); cf *Re Martin Coulter Enterprises Ltd* [1988] BCLC 12, 4 BCC 210. The court left open the question whether mere detriment could constitute consideration. See also *Barclays Bank plc v Eustice* [1995] 4 All ER 511, [1995] 1 WLR 1238, CA.

UPDATE

438-938 Winding Up by the Court

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844 Transaction at an undervalue

NOTE 5--See also *Clements (liquidator of HHO Licensing Ltd) v Henry Hadaway Organisation Ltd* [2007] EWHC 2953 (Ch), [2008] 1 BCLC 223.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/845. Remedy in respect of a transaction at an undervalue.

845. Remedy in respect of a transaction at an undervalue.

Where a company has at a relevant time¹ entered into a transaction with any person at an undervalue², the liquidator³ may apply⁴ to the court for an order to restore the position to what it would have been if the company had not entered into that transaction⁵. Upon such an application, the court must make such order as it thinks fit for achieving this effect⁶; but the court must not make such an order in respect of a transaction at an undervalue if it is satisfied that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and that, at the time it did so, there were reasonable grounds for believing that the transaction would benefit the company⁷.

1 For the meaning of 'relevant time' see para 850 post.

2 For the meaning of 'transaction at an undervalue' see para 844 ante.

3 Or, in the case where an administration order has been made, the administrator: Insolvency Act 1986 s 238(1).

4 As to the making of applications see para 1055 et seq post.

5 Insolvency Act 1986 s 238(2). In deciding whether the appropriate remedy is to order monetary compensation or to set aside the transaction the court should not start from any a priori position, and each case turns on its particular facts: *Ramlort Ltd v Reid* [2004] EWCA Civ 800; *Walker v WA Personnel Ltd* [2002] BPIR 621.

6 Ibid s 238(3). The court's power to grant relief is discretionary: *Re Paramount Airways Ltd (in administration)* [1993] Ch 223, [1992] 3 All ER 1, CA (cited in para 844 note 2 ante). As to the orders which may be made see further the Insolvency Act 1986 s 241 (as amended); and para 851 post.

7 Ibid s 238(5). See *Re Barton Manufacturing Co Ltd* [1999] 1 BCLC 740, [1998] BCC 827. It has been held that prima facie the limitation period applicable to claims in respect of a transaction at an undervalue is 12 years, but if the substance or essential nature of the relief sought is to recover money then the applicable limitation period is 6 years: *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/846. Preference.

846. Preference.

A company gives a preference to a person¹ if that person is one of the company's creditors² or a surety or guarantor for any of the company's debts or other liabilities³, and if the company does anything or suffers anything to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation⁴, will be better than the position he would have been in if that thing had not been done⁵.

1 The Insolvency Act 1986 s 239 applies to any person (s 239(2)), and is extra-territorial in its effect (*Re Paramount Airways Ltd (in administration)* [1993] Ch 223, [1992] 3 All ER 1, CA (cited in para 844 note 2 ante)).

2 As to the meaning of 'creditor' see *Re Thirty-Eight Building Ltd* [1999] 1 BCLC 416; and *Re Thirty-Eight Building Ltd (in liquidation) (No 2)*, *Simms v Saunders* [2000] 1 BCLC 201 (a review of the first decision under the Insolvency Rules 1986, SI 1986/1925, r 7.47 (see para 1030 post)).

3 Insolvency Act 1986 s 239(4)(a).

4 There is no statutory definition of 'insolvent liquidation' for these purposes. For such a definition for the purpose of wrongful trading provisions see *ibid* s 214(6); and para 914 note 3 post.

5 *Ibid* s 239(4)(b). As to acts done in pursuance of court orders see para 849 post; and as to whether a director may be liable for causing or procuring the company to give a preference see para 694 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/847. Remedy in respect of preference; requisite desire.

847. Remedy in respect of preference; requisite desire.

Where a company has at a relevant time¹ given a preference to any person², the liquidator³ may apply to the court for an order to restore the position to what it would have been if the company had not given that preference⁴. Upon such an application, the court must make such order as it thinks fit for achieving this effect⁵; but the court may not make such an order in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce, in relation to that person, the effect of putting that person into a position which, in the event of the company going into insolvent liquidation⁶, would be better than the position he would otherwise have been in⁷.

1 For the meaning of 'the relevant time' see para 850 post.

2 For the meaning of 'give a preference' see para 846 ante.

3 Or, in the case where an administration order has been made, the administrator: Insolvency Act 1986 s 238(1). As to the making of applications see para 1055 et seq post.

4 Ibid s 239(2). Recoveries from successful proceedings under s 239 enure for the benefit of the general unsecured creditors and not a chargee: *Re MC Bacon Ltd* [1991] Ch 127, [1990] 3 WLR 646; *Re Yagerphone Ltd* [1935] Ch 392. See also *Re Oasis Merchandising Services Ltd*, *Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA. The position may be different where specific property which was formerly subject to the charge is recovered through the proceedings: *NA Kratzmann Pty Ltd v Tucker (No 2)* (1968) 123 CLR 295, Aust HC. A liquidator has power to receive an indemnity for his costs and to grant a right of reimbursement to an indemnifier and funder of the litigation: *Re Exchange Travel (Holdings) Ltd (in liquidation) (No 3)*, *Katz v McNally* [1997] 2 BCLC 579 (decided prior to the amendment of Insolvency Rules 1986, SI 1986/1925, r 4.218(1)(a) by SI 2002/2712: see further para 810 ante). As to the orders which may be made see further the Insolvency Act 1986 s 241 (as amended); and para 851 post.

5 Ibid s 239(3).

6 See para 846 note 4 ante.

7 Insolvency Act 1986 s 239(5). The objective test under the previous legislation of dominant intention to prefer no longer applies under s 239 and has been replaced by the subjective test of being influenced by a desire to prefer: *Re MC Bacon Ltd* [1990] BCLC 324, [1990] BCC 78; *Re Fairway Magazines Ltd*, *Fairbairn v Hartigan* [1993] BCLC 643, [1992] BCC 924. Case law on the test under previous legislation should not be cited: *Re MC Bacon Ltd* supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/848. Presumed influence in the case of connected persons.

848. Presumed influence in the case of connected persons.

A company which has given a preference¹ to a person connected with the company², otherwise than by reason only of being its employee, at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by a desire to produce in relation to that person the effect of putting that person into a position which, in the event of the company going into insolvent liquidation³ would be better than the position he would otherwise have been in⁴.

1 For the meaning of 'give a preference' see para 846 ante.

2 For the meaning of 'connected' with a company see para 5 ante.

3 See para 846 note 4 ante.

4 Insolvency Act 1986 s 239(6); *Re DKG Contractors Ltd* [1990] BCC 903; *Re Beacon Leisure Ltd* [1992] BCLC 565, [1991] BCC 213; *Re Thirty-Eight Building Ltd* [1999] 1 BCLC 416; *Re Thirty-Eight Building Ltd (No 2)*, *Simms v Saunders* [2000] 1 BCLC 201. The burden of proof where the Insolvency Act 1986 s 239(6) does not apply is upon the liquidator: *Re Ledingham-Smith (a bankrupt), ex p the trustee of the bankrupt v Pannell Kerr Foster (a firm)* [1993] BCLC 635. As to the requisite intention see para 847 ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/849. Acts pursuant to court orders.

849. Acts pursuant to court orders.

The fact that something has been done in pursuance of an order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference¹.

¹ Insolvency Act 1986 s 239(7). For the meaning of 'give a preference' see para 846 ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/850. The relevant time.

850. The relevant time.

In order for there to be a remedy in respect of a transaction at an undervalue or the giving of a preference, the time at which a company enters into a transaction at an undervalue or gives a preference must be a 'relevant time'¹. If the transaction is entered into or the preference is given at the following times, it is a 'relevant time' for these purposes:

- 1199 (1) in the case of a transaction at an undervalue or a preference which is given to a person who is connected with the company², otherwise than by reason of being its employee, at a time in the period of two years ending with the onset of insolvency³;
- 1200 (2) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six months ending with the onset of insolvency⁴;
- 1201 (3) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application⁵; and
- 1202 (4) in either case, at a time between the filing with the court of a copy of a notice of intention to appoint an administrator⁶ and the making of an appointment as a result⁷.

1 As to transactions at an undervalue see para 845 ante; and as to preferences see para 847 ante.

2 For the meaning of 'connected' with a company see para 5 ante. As to the presumed influence in such a case see para 848 ante.

3 Insolvency Act 1986 s 240(1)(a). For these purposes, the onset of insolvency is: (1) in a case where s 238 (as amended) (transactions at an undervalue: see paras 844-845 ante) or s 239 (preferences: see paras 846-849 ante) applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made; (2) in a case where s 238 (as amended) or s 239 applies by reason of an administrator of a company being appointed under Sch B1 para 14 (as added) or Sch B1 para 22 (as added) (see paras 228 et seq, 236 et seq ante) following filing of a notice to appoint under that provision, the date on which the copy of the notice is filed; (3) in a case where s 238 (as amended) or s 239 applies by reason of an administrator of a company being appointed otherwise than as mentioned above, the date on which the appointment takes effect; (4) in a case where s 238 (as amended) or s 239 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 37 or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed); or (5) in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of a company's going into liquidation at any other time, the date of the commencement of the winding up: see s 240(3)(a)-(e) (substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 26(1), (4)). The substitution of these provisions does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which circumstances 'the onset of insolvency' is: (a) in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of the making of an administration order or of a company going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made; (b) in a case where s 238 (as amended) or s 239 applies by reason of a company going into liquidation following conversion of administration into winding up by virtue of the European Regulation on Insolvency Proceedings art 37, the date of the presentation of the petition on which the administration order was made; and (c) in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding-up: s 240(3)(a), (aa), (ab) (s 240(3)(a), (b) as originally enacted; s 240(3)(aa) added by the Insolvency Act 1986 (Amendment) (No 2) Regulations

2002, SI 2002/1240, reg 11); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. As to entering administration see para 145 et seq ante. For the meaning of 'go into liquidation' see para 9 note 3 ante. As to the commencement of a winding up by the court see the Insolvency Act 1986 s 129 (as amended); and para 489 ante. the commencement of a voluntary winding up see s 86; and para 996 post. As to administration orders see para 145 et seq ante. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

Where a company enters into a transaction at an undervalue or gives a preference at the time referred to in the Insolvency Act 1986 s 240(1)(a) or s 240(1)(b), that time is not a 'relevant time' unless the company is at that time unable to pay its debts (ie within the meaning of s 123: see para 446 ante), or becomes unable to pay its debts in consequence of the transaction or preference; although these requirements are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company: s 240(2).

4 Ibid s 240(1)(b) (amended by the Enterprise Act 2002 s 278(2), Sch 17 paras 9, 26(1), (3)). See also note 3 supra.

5 Insolvency Act 1986 s 240(1)(c) (s 240(1)(c), (d) added by the Enterprise Act 2002 Sch 17 paras 9, 26(1), (2)). The addition made to this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes: Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3.

6 Ie under the Insolvency Act 1986 Sch B1 para 14 (as added) or Sch B1 para 22 (as added).

7 Ibid s 240(1)(d) (as added: see note 5 supra).

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/851. Orders which may be made.

851. Orders which may be made.

Without prejudice to the generality of the power of the court to make orders restoring the position to what it would have been if the company had not entered into the transaction at an undervalue or given the preference¹, an order with respect to such transactions or preferences entered into or given by a company may:

- 1203 (1) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company²;
- 1204 (2) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred³;
- 1205 (3) release or discharge, in whole or in part, any security given by the company⁴;
- 1206 (4) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator⁵ as the court may direct⁶;
- 1207 (5) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate⁷;
- 1208 (6) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged, in whole or in part, under the transaction or by the giving of the preference⁸; and
- 1209 (7) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged, in whole or in part, under or by, the transaction or the giving of the preference⁹.

Such an order¹⁰ may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or, as the case may be, the person to whom the preference was given; however, it may not:

- 1210 (a) prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest¹¹;
- 1211 (b) require a person who received a benefit from the transaction or preference in good faith and for value to pay a sum to the liquidator, except where that person was a party to the transaction, or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company¹².

Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt:

- 1212 (i) he had notice of the relevant surrounding circumstances¹³ and of the relevant proceedings¹⁴; or
- 1213 (ii) he was connected¹⁵ with, or was an associate¹⁶ of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference¹⁷,

then, unless the contrary is shown, it is to be presumed¹⁸ that the interest was acquired or the benefit was received otherwise than in good faith¹⁹.

1 le under the Insolvency Act 1986 s 238(3) (see para 845 ante) and s 239(3) (see para 847 ante).

2 Ibid s 241(1)(a). See *Walker v WA Personnel Ltd* [2002] BPIR 621.

3 Insolvency Act 1986 s 241(1)(b).

4 Ibid s 241(1)(c).

5 Or, in the case where an administration order has been made, the administrator: ibid ss 238(1), 239(1).

6 Ibid s 241(1)(d).

7 Ibid s 241(1)(e).

8 Ibid s 241(1)(f).

9 Ibid s 241(1)(g).

10 le an order under ibid s 238 (as amended) (see para 843 ante) or s 239 (see para 843 ante).

11 Ibid s 241(2)(a) (s 241(2)(a), (b) amended by the Insolvency (No 2) Act 1994 s 1(1)).

12 Insolvency Act 1986 s 241(2)(b) (as amended: see note 11 supra).

13 For these purposes, the relevant surrounding circumstances are, as the case may require: (1) the fact that the company in question entered into the transaction at an undervalue; or (2) the circumstances which amounted to the giving of the preference by the company in question: ibid s 241(3)(a), (b) (s 241(3) substituted, and s 241(2A), (3A)-(3C) added, by the Insolvency (No 2) Act 1994 s 1(2), (3)).

14 Insolvency Act 1986 s 241(2A)(a) (as added: see note 13 supra).

A person has notice of the relevant proceedings in a case where s 238 (as amended) (transactions at an undervalue: see paras 844-845 ante) or s 239 (preferences: see paras 846-849 ante) applies by reason of the company entering administration, if he has notice that: (1) an administration application has been made; (2) an administration order has been made; (3) a copy of a notice of intention to appoint an administrator under Sch B1 para 14 (as added) or Sch B1 para 22 (as added) (see paras 228 et seq, 236 et seq ante) has been filed; or (4) notice of the appointment of an administrator has been filed under Sch B1 para 18 (as added) or Sch B1 para 29 (as added) (see paras 232, 241 ante): s 241(3A) (as added (see note 13 supra); and substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 27(1), (2)). The substitution of this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which circumstances a person has notice of the relevant proceedings in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of the making of an administration order if he has notice: (a) of the fact that the petition on which the administration order is made has been presented; or (b) of the fact that the administration order has been made (s 241(3A) (as so added); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. For the meaning of 'go into liquidation' see para 9 note 3 ante.

A person has notice of the relevant proceedings in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of the company in question going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, if he has notice that: (i) an administration application has been made; (ii) an administration order has been made; (iii) a copy of a notice of intention to appoint an administrator under Sch B1 para 14 (as added) or Sch B1 para 22 (as added) has been filed; (iv) notice of the appointment of an administrator has been filed under Sch B1 para 18 (as added) or Sch B1 para 29 (as added); or (v) the company has gone into liquidation: s 241(3B) (as added (see note 13 supra); and substituted by the

Enterprise Act 2002 Sch 17 paras 9, 27(1), (3)). The substitution of this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes, in which circumstances a person has notice of the relevant proceedings in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of the company in question going into liquidation immediately upon the discharge of an administration order if he has notice: (A) of the fact that the petition on which the administration order is made has been presented; (B) of the fact that the administration order has been made; or (C) of the fact that the company has gone into liquidation: s 241(3B) (as so added); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3.

A person has notice of the relevant proceedings in a case where the Insolvency Act 1986 s 238 (as amended) or s 239 applies by reason of the company in question going into liquidation at any other time, if he has notice, where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation, or, in any other case, of the fact that the company has gone into liquidation: s 241(3C) (as added: see note 13 supra).

15 For the meaning of 'connected' with a company see para 5 ante.

16 For the meaning of 'associate' see para 5 ante.

17 Insolvency Act 1986 s 241(2A)(b) (as added: see note 13 supra).

18 le for the purposes of *ibid* s 241(2)(a) (as amended) (see the text and notes 10-11 supra) or, as the case may be, s 241(2)(b) (as amended) (see the text and notes 10-12 supra).

19 *Ibid* s 241(2A) (as added: see note 13 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(i) Transactions at an Undervalue and Preferences/852. Other remedies in respect of transactions at an undervalue and preferences.

852. Other remedies in respect of transactions at an undervalue and preferences.

The provisions relating to transactions at an undervalue and preferences¹ apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give².

¹ ie the Insolvency Act 1986 ss 238-241 (as amended): see paras 844-851 ante.

² Ibid s 241(4). Under the Companies Act 1948, in particular s 320 (repealed), where any payment was void as a fraudulent preference, misfeasance proceedings could have been taken against the directors causing or procuring the payment to be made to recover the amount paid: *Re Washington Diamond Mining Co* [1893] 3 Ch 95, CA; *West Mercia Safetyware Ltd (in liquidation) v Dodd* [1988] BCLC 250, 4 BCC 30, CA; *Yukong Line Ltd of Korea v Rendsburg Investments Corp of Liberia (No 2)* [1998] 4 All ER 82, [1998] 1 WLR 294. It is not the case, however, that in all cases where a remedy would be available under the Insolvency Act 1986 s 239 the directors responsible for the transaction necessarily commit any misfeasance; whether they do is a matter of fact in the particular case: *Re Brian D Pierson (Contractors) Ltd* [2001] 1 BCLC 275, [1999] BCC 26. The statutory presumption of desire under the Insolvency Act 1986 s 239(6) (see para 848 ante) does not apply where misfeasance is alleged: *Re Brian D Pierson (Contractors) Ltd* supra. Money recovered by the liquidator as a fraudulent preference did not form part of the company's general assets so as to be subject to a charge on its assets, but was impressed with a trust for the general body of creditors: *Re Yagerphone Ltd* [1935] Ch 392. See also *Re Oasis Merchandising Services Ltd*, *Ward v Aitken* [1998] Ch 170, [1997] 1 All ER 1009, CA. Where money which was advanced by directors to discharge pressing claims against the company had been repaid to them, proceedings to set aside the transaction as a fraudulent preference could not be maintained by debenture holders having only a floating charge: *Willmott v London Celluloid Co* (1886) 34 ChD 147, CA.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(ii) Transactions Defrauding Creditors/853. In general.

(ii) Transactions Defrauding Creditors

853. In general.

Transactions at an undervalue entered into by a company may also be avoided under the relevant statutory provisions¹ whether or not the company is subject to the insolvency procedures under the Insolvency Act 1986², provided that the transaction in question has been entered into with the requisite intention³. Whereas victims of the transaction may in certain instances apply for orders avoiding such transactions, there are restrictions on the persons who may apply⁴.

1 I.e. the Insolvency Act 1986 ss 423-425 (as amended): see paras 854-856 post. These provisions also apply, with certain modifications, to transactions entered into by individuals: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 663 et seq. A transaction entered into before 29 December 1986 cannot be set aside, nor may any order be made varying or reversing such transaction under these provisions, except to the extent that it could have been set aside under the law in force immediately before that day: s 437, Sch 11 para 20(1), (2).

2 Cf para 843 et seq ante.

3 See para 854 post. In the case of such transactions there are no such restrictions as to the time a transaction at an undervalue may be subject to avoidance such as are referred to in para 850 ante.

4 See para 855 post.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(ii) Transactions Defrauding Creditors/854. Transactions defrauding creditors; requisite intention.

854. Transactions defrauding creditors; requisite intention.

Where a person¹ enters into a transaction with another person at an undervalue, the court² may make such order as it thinks fit for restoring the position to what it would have been if the transaction had not been entered into³, and⁴ for protecting the interests of persons who are victims⁵ of the transaction⁶. For this purpose, a person enters into such a transaction if:

1214 (1) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration⁷; or

1215 (2) he enters into a transaction with the other for a consideration, the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself⁸.

However, in the case of a person entering into such a transaction, an order may only be made if the court is satisfied that it was entered into by him for the purpose:

1216 (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him⁹; or

1217 (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make¹⁰.

Where the respondent has received legal advice in relation to the transaction, the applicant may be able to obtain disclosure of documents which would prima facie be subject to legal professional privilege¹¹.

1 For the meaning of 'person' see para 13 note 2 ante. It seems that the Insolvency Act 1986 s 423 is extra-territorial in its effect: *Re Paramount Airways Ltd (in administration)* [1993] Ch 223, [1992] 3 All ER 1, CA.

2 For these purposes, 'the court' means the High Court or, if the person entering into the transaction is a body capable of being wound up under the Insolvency Act 1986 Pt IV (ss 73-219) (as amended) or Pt V (ss 220-229) (as amended), any other court having jurisdiction to wind it up: s 423(4)(b). There are two conflicting decisions on whether an application under s 423 which is not made in existing insolvency proceedings or which was brought otherwise than by reason of a right to apply under any other provision of the Act in relation to existing proceedings could be commenced in any part of the High Court or solely in the Companies Court or the Bankruptcy Court, as the case may be: *Moon v Franklin* (1990) Independent, 22 June; *TSB Bank plc v Katz* [1997] BPIR 147. In the latter case, it was held that the Insolvency Rules 1986, SI 1986/1925 (as amended), did not apply to the proceedings. As to the courts having jurisdiction to wind up companies see para 438 et seq ante. Where the person entering into the transaction is an individual, 'the court' means the High Court or any other court which would have jurisdiction in relation to a bankruptcy petition relating to him: see the Insolvency Act 1986 s 423(4)(a); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 664.

3 Ibid s 423(2)(a).

4 The word 'and' is to be read conjunctively: *Chohan v Saggat* [1994] 1 BCLC 706, [1994] BCC 134, CA.

5 In relation to a transaction at an undervalue, references in the Insolvency Act 1986 s 423 and s 424 (see para 855 post) to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it: s 423(5). A person who cannot demonstrate that he will be worse off as a result of the transaction is not a victim, eg where the only assets of the transferor are fully charged: *Pinewood Joinery (a firm) v Starelm Properties Ltd*

[1994] 2 BCLC 412, [1994] BCC 569; cf *Barclays Bank plc v Eustice* [1995] 4 All ER 511, [1995] 1 WLR 1238, CA. A claimant in proceedings who has a chance of success is a 'victim' within the meaning of the Insolvency Act 1986 s 423(5): *Pinewood Joinery (a firm) v Starelm Properties Ltd* supra.

6 Insolvency Act 1986 s 423(2)(b). As to the orders which may be made see para 856 post.

7 Ibid s 423(1)(a). See *Re MC Bacon Ltd* [1990] BCLC 324, [1990] BCC 78 (decided under the Insolvency Act 1986 s 238 (see para 843 ante)); *National Bank of Kuwait v Menzies* [1994] 2 BCLC 306, sub nom *Menzies v National Bank of Kuwait SAK* [1994] BCC 119, CA; *Agricultural Mortgage Corp plc v Woodward* [1995] 1 BCLC 1, [1994] BCC 688, CA. Even where, as between transferor and transferee, full consideration is apparently given, there may be a transaction at an undervalue if the interests of a third party are prejudicially affected: *Agricultural Mortgage Corp plc v Woodward* supra; *National Westminster Bank plc v Jones* [2001] 1 BCLC 98; on appeal [2001] EWCA Civ 1541, [2002] 1 BCLC 55, CA. See also *Barclays Bank plc v Eustice* [1995] 4 All ER 511, [1995] 1 WLR 1238, CA. As to the position where an individual enters into a transaction at an undervalue see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 654.

8 Insolvency Act 1986 s 423(1)(c). See note 7 supra.

9 Ibid s 423(3)(a). A person cannot contend that his purpose falls outside the relevant purpose of s 423(3) simply by pointing to another purpose, such as the benefit of his family, friends or the advantage of business associates: *Chohan v Saggar* [1992] BCC 306; *Royscot Spa Leasing Ltd v Lovett* [1995] BCC 502, CA; *Barclays Bank plc v Eustice* [1995] 4 All ER 511, [1995] 1 WLR 1238, CA. The applicant need not show that one of the statutory purposes was the only or dominant purpose behind the transaction, merely that the donor, vendor or settlor was substantially motivated by one of those purposes: *IRC v Hashmi* [2002] EWCA Civ 981, [2002] 2 BCLC 489, [2002] BCC 943, CA (resolving the uncertain position under former case law: see *Chohan v Saggar* supra; cf *Royscot Spa Leasing Ltd v Lovett* supra; *Pinewood Joinery (a firm) v Starelm Properties Ltd* [1994] 2 BCLC 412, [1994] BCC 569; *Midland Bank plc v Wyatt* [1995] 3 FCR 11, [1997] 1 BCLC 242). An applicant under the Insolvency Act 1986 s 423 does not need to prove dishonesty or fraud; even if the thing was done after taking legal advice, and with honest motive, it may be set aside: *Arbuthnot Leasing International Ltd v Havelet Leasing Ltd (No 2)* [1990] BCC 636.

10 Insolvency Act 1986 s 423(3)(b). See note 9 supra.

11 *Barclays Bank plc v Eustice* [1995] 4 All ER 511, [1995] 1 WLR 1238, CA; *Royscot Spa Leasing Ltd v Lovett* [1995] BCC 502, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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855. Who may apply.

An application for any order under the provisions concerning transactions defrauding creditors¹ may not be made in relation to a transaction except:

- 1218 (1) in a case where the debtor² is a body corporate which is being wound up or is in administration, by the official receiver³, the liquidator or the administrator of the body corporate or, with the leave of the court, by a victim of the transaction⁴;
- 1219 (2) in a case where a victim of the transaction is bound by a voluntary arrangement⁵, by the supervisor of the voluntary arrangement or by any person who, whether or not so bound, is such a victim⁶; or
- 1220 (3) in any other case, by a victim of the transaction⁷.

An application made under any of these provisions is to be treated as made on behalf of every victim of the transaction⁸.

¹ I.e. the Insolvency Act 1986 s 423: see para 854 ante.

² For these purposes, in relation to a transaction at an undervalue, the person entering into the transaction is referred to in *ibid* s 424 (as amended) and s 425 (see para 856 post) as 'the debtor': s 423(5).

³ As to the official receiver see para 503 et seq ante.

⁴ Insolvency Act 1986 s 424(1)(a) (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 36). The amendment made to this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which circumstances the exception contained in the Insolvency Act 1986 s 424(1)(a) refers to a case where the debtor is a body corporate which is being wound up or in relation to which an administration order is in force: s 424(1)(a) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. For the meaning of 'victim' see para 854 note 5 ante.

In the case where an individual who has entered into the transaction at an undervalue has been adjudged bankrupt, the application may be made only by the official receiver, the trustee of the bankrupt's estate or, with the leave of the court, by the victim of the transaction: see the Insolvency Act 1986 s 424(1)(a) (as originally enacted); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 665.

⁵ I.e. a voluntary arrangement approved under *ibid* Pt I (ss 1-7B) (as amended) (see para 71 et seq ante) or, in the case of an individual, under Pt VIII (ss 252-263) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 81 et seq).

⁶ *Ibid* s 424(1)(b).

⁷ *Ibid* s 424(1)(c).

⁸ *Ibid* s 424(2). See *Dora v Simper* [2000] 2 BCLC 561, CA. As to the orders which may be made for the benefit of all persons on whose behalf the application for the order is treated as made see para 856 post. As to the making of applications see para 1055 et seq post; and as to the court to which the application should be made see para 854 note 2 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(ii) Transactions Defrauding Creditors/856. Orders which may be made.

856. Orders which may be made.

Without prejudice to the generality of the provisions concerning transactions defrauding creditors¹, an order made with respect to such a transaction may:

- 1221 (1) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made²;
- 1222 (2) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred³;
- 1223 (3) release or discharge, in whole or in part, any security⁴ given by the debtor⁵;
- 1224 (4) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct⁶;
- 1225 (5) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction to be under such new or revived obligations as the court thinks appropriate⁷;
- 1226 (6) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged, in whole or in part, under the transaction⁸.

An order made under these above provisions may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order:

- 1227 (a) may not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances⁹, or prejudice any interest deriving from such an interest¹⁰; and
- 1228 (b) may not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances, to pay any sum unless he was a party to the transaction¹¹.

1 le the Insolvency Act 1986 s 423: see para 854 ante.

2 Ibid s 425(1)(a). See para 855 ante.

3 Ibid s 425(1)(b).

4 For these purposes, 'security' means any mortgage, charge, lien or other security: ibid s 425(4).

5 Ibid s 425(1)(c). For the meaning of 'the debtor' see para 855 note 2 ante.

6 Ibid s 425(1)(d).

7 Ibid s 425(1)(e).

8 Ibid s 425(1)(f).

9 For these purposes, the relevant circumstances, in relation to a transaction, are the circumstances by virtue of which an order under *ibid* s 423 (see para 854 ante) may be made in respect of the transaction: s 425(3).

10 *Ibid* s 425(2)(a). In *Arbuthnot Leasing International Ltd v Havelet Leasing Ltd (No 2)* [1990] BCC 636, the property was ordered to be held on trust by the transferee for the company, but without prejudice to the claims of subsequent creditors. In *Chohan v Saggar* [1994] 1 BCLC 706, [1994] BCC 134, CA, it was held that the power under the Insolvency Act 1986 s 423(2) was not a power to restore the position generally, but to restore the position in so far as necessary to protect the interests of the victims. Section 423 has unlimited extra-territorial effect and hence the court has jurisdiction to make an order under s 425 against an Irish company in respect of a transaction which had no substantial connection with England and Wales: *Jyske Bank (Gibraltar) Ltd v Spjeldnaes* [1999] 2 BCLC 101.

11 Insolvency Act 1986 s 425(2)(b). See note 10 *supra*.

UPDATE

438-938 Winding Up by the Court

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856 Orders which may be made

NOTE 6--See *Pena v Coyne (No 2)* [2004] EWHC 2685 (Ch), [2004] 2 BCLC 730.

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(iii) Extortionate Credit Transactions

857. In general.

Provision has been made for situations where a company enters administration¹ or goes into liquidation² where it is or has been a party to a transaction for, or involving, the provision of credit to the company³.

1 As to entering administration see para 145 et seq ante.

2 For the meaning of 'go into liquidation' see para 9 note 3 ante.

3 Insolvency Act 1986 ss 238(1), 244(1) (s 238(1) amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 25). The amendment made to these provisions does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which circumstances the statutory provisions in connection with transactions for, or involving, the provision of credit to the company apply where an administration order is made in respect of a company or the company goes into liquidation: Insolvency Act 1986 s 238(1) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. The provisions mentioned above are those contained in the Insolvency Act 1986 s 244: see paras 858-860 post.

UPDATE

438-938 Winding Up by the Court

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858. Extortionate credit transaction.

A transaction is extortionate if, having regard to the risk accepted by the person providing the credit, the terms of it are or were such as to require grossly exorbitant payments to be made, whether unconditionally or in certain contingencies, in respect of the provision of the credit, or it otherwise grossly contravened ordinary principles of fair dealing; and it is to be presumed, unless the contrary is proved, that a transaction with respect to which an application is made¹ is or, as the case may be, was extortionate².

1 Ie under the Insolvency Act 1986 s 244: see para 859 post.

2 Ibid s 244(3).

UPDATE

438-938 Winding Up by the Court

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859. Orders with respect to extortionate credit transactions.

On the application of the liquidator¹, the court may make an order with respect to the transaction if the transaction is or was extortionate² and was entered into in the period of three years ending with the day on which the company went into liquidation³. An order with respect to any such transaction may contain such one or more of the following provisions as the court thinks fit:

- 1229 (1) provision setting aside the whole or part of any obligation created by the transaction⁴;
- 1230 (2) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held⁵;
- 1231 (3) provision requiring any person who is or was a party to the transaction to pay to the liquidator any sums paid to that person, by virtue of the transaction, by the company⁶;
- 1232 (4) provision requiring any person to surrender to the liquidator any property held by him as security for the purposes of the transaction⁷; and
- 1233 (5) provision directing accounts to be taken between any persons⁸.

1 Or, in the case where the company has entered administration (or, as the case may be, has an administration order made in respect of it), the administrator: see the Insolvency Act 1986 s 238(1) (as amended), s 244(1); and para 857 ante. As to the making of applications see para 1055 et seq post. As to administration orders see para 145 et seq ante.

2 See para 858 ante.

3 Insolvency Act 1986 s 244(2) (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 30). In the case of a company which has entered administration, this period is expressed as three years ending with the day on which the company entered administration (Insolvency Act 1986 s 244(2) (as so amended)), except where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which case the period is expressed as three years ending with the day on which the administration order was made (s 244(2) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3). For the meaning of 'go into liquidation' see para 9 note 3 ante.

4 Insolvency Act 1986 s 244(4)(a).

5 Ibid s 244(4)(b).

6 Ibid s 244(4)(c).

7 Ibid s 244(4)(d).

8 Ibid s 244(4)(e).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/ (iii) Extortionate Credit Transactions/860. Other remedies.

860. Other remedies.

The powers conferred with respect to extortionate credit transactions¹ are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue².

1 See para 859 ante.

2 Insolvency Act 1986 s 244(5). As to transactions at an undervalue see para 843 et seq ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(iv) Avoidance of Certain Floating Charges/861. In general.

(iv) Avoidance of Certain Floating Charges

861. In general.

Provision has been made¹ in connection with certain floating charges which are in existence when a company enters administration² or goes into liquidation³.

¹ See by the Insolvency Act 1986 s 245 (as amended): see paras 862-864 post. These provisions apply to floating charges entered into on or after 29 December 1986. As to the avoidance of floating charges entered into before 29 December 1986 see para 434 note 3 head (5) ante.

² As to entering administration see para 145 et seq ante.

³ Insolvency Act 1986 ss 238(1), 245(1) (s 238(1) amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 25). The amendment made to this provision does not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which circumstances the statutory provisions relating to floating charges apply where an administration order is made in respect of a company or the company goes into liquidation: Insolvency Act 1986 s 238(1) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. For the meaning of 'go into liquidation' see para 9 note 3 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(iv) Avoidance of Certain Floating Charges/862. Invalidity of floating charge.

862. Invalidity of floating charge.

A floating charge¹ on the company's undertaking or property created at a relevant time² is invalid except to the extent of the aggregate of:

- 1234 (1) the value of so much of the consideration for the creation of the charge as consists of money paid³, or goods or services supplied⁴, to the company at the same time as, or after, the creation of the charge⁵;
- 1235 (2) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company⁶; and
- 1236 (3) the amount of such interest, if any, as is payable on the amount falling within either of heads (1) and (2) above in pursuance of any agreement under which the money was so paid, the goods or services were so supplied, or the debt was so discharged or reduced⁵.

1 For these purposes, 'floating charge' means a charge which as created was a floating charge and includes a floating charge within the Companies Act 1985 s 462 (Scottish floating charges): Insolvency Act 1986 s 251. As to floating charges generally see COMPANIES vol 15 (2009) PARA 1269.

2 For the meaning of 'a relevant time' see para 863 post. It was argued in *Re Shoe Lace Ltd, Power v Sharp Investments Ltd* [1994] 1 BCLC 111, [1993] BCC 609, CA, that the change in wording from the opening words of the Companies Act 1948 s 322 (repealed), that is to say from 'Where a company is being wound up ...' to 'This section applies as does section 238 ...' meant that the Insolvency Act 1986 s 245 took effect only on the making of a winding-up order rather than the date of presentation of the petition as under the Companies Act 1948 s 322 (repealed). As the company had sold its assets and accounted to the charge holder for the proceeds between presentation of the petition and the winding-up order, had the argument been correct, the charge holder could have retained the proceeds of sale: see *Mace Builders (Glasgow) Ltd v Lunn* [1987] Ch 191, [1986] 3 WLR 921, CA. The argument was rejected in *Re Shoe Lace Ltd, Power v Sharp Investments Ltd* supra and there is no relevant difference between the Companies Act 1948 s 322 (repealed) and the Insolvency Act 1986 s 245 in this respect.

3 See para 864 post.

4 See para 865 post.

5 Insolvency Act 1986 s 245(2)(a). Under the Companies Act 1948 s 322 (repealed) and earlier corresponding provisions, it was held that, notwithstanding the invalidation of the floating charge, the covenant to pay the sum secured by it remained valid; and, if the sum secured was paid before the winding up, the liquidator could not recover the sum so repaid (*Re Parkes Garage (Swadlincote) Ltd* [1929] 1 Ch 139; *Mace Builders (Glasgow) Ltd v Lunn* [1987] Ch 191, CA) unless the repayment could be set aside as a preference (see para 846 et seq ante). A floating charge given within the relevant period pursuant to the terms of an agreement made outside the period providing for its execution on the happening of a certain event which happened within that period has been held to be invalid: *Re Gregory Love & Co* [1916] 1 Ch 203.

6 Insolvency Act 1986 s 245(2)(b). See note 5 supra.

7 Ibid s 245(2)(c). See note 5 supra.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(iv) Avoidance of Certain Floating Charges/863. The relevant time.

863. The relevant time.

The time at which a floating charge is created by a company is a relevant time for the purposes of the provisions relating to the invalidity of floating charges¹ if the charge is created:

- 1237 (1) in the case of a charge which is created in favour of a person who is connected with the company², at a time in the period of two years ending with the onset of insolvency³;
- 1238 (2) in the case of a charge created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency⁴;
- 1239 (3) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application⁵; or
- 1240 (4) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator⁶ and the consequent making of an appointment⁷.

1 le the Insolvency Act 1986 s 245 (as amended) (see the text and notes 3-7 infra; and para 862 ante).

2 For to the meaning of 'connected' with a company see para 5 ante.

3 Insolvency Act 1986 s 245(3)(a). For these purposes, the onset of insolvency is: (1) in a case where s 245 (as amended) applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application was made; (2) in a case where s 245 applies by reason of an administrator of a company being appointed under Sch B1 para 14 (as added) or Sch B1 para 22 (as added) (see paras 228 et seq, 236 et seq ante) following filing with the court of a copy of notice of intention to appoint under that provision, the date on which the copy of the notice is filed; (3) in a case where s 245 applies by reason of an administrator of a company being appointed otherwise than as mentioned in head (1) or head (2) supra, the date on which the appointment takes effect; or (4) in a case where s 245 applies by reason of a company going into liquidation, the date of the commencement of the winding up: s 245(5)(a)-(d) (s 245(5)(a), (b) substituted, and s 245(c), (d) added, by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 31(1), (4)). The amendments made to these provisions do not apply where a petition for an administration order has been presented prior to 15 September 2003, or in respect of special administration regimes (see para 145 ante), in which circumstances 'the onset of insolvency' is: (a) in a case where the Insolvency Act 1986 s 245 applies by reason of the making of an administration order, the date of the presentation of the petition on which the administration order was made; or (b) in a case where s 245 applies by reason of a company going into liquidation, the date of the commencement of the winding up: Insolvency Act 1986 s 245(5)(a), (b) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3. As to entering administration see para 145 et seq ante. For the meaning of 'go into liquidation' see para 9 note 3 ante. As to the commencement of a winding up by the court see the Insolvency Act 1986 s 129 (as amended); and para 489 ante. As to the commencement of a voluntary winding up see s 86; and para 996 post. As to administration orders see para 145 et seq ante.

4 Ibid s 245(3)(b) (amended by the Enterprise Act 2002 s 278(2), Sch 17 paras 9, 31(1), (2), Sch 26). Where a company creates a floating charge in the period of 12 months ending with the onset of insolvency, and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of the Insolvency Act 1986 s 245 (as amended) unless the company is at that time unable to pay its debts (within the meaning of s 123: see para 446 ante), or becomes unable to pay its debts in consequence of the transaction under which the charge is created: s 245(4).

5 Ibid s 245(3)(c) (s 245(3)(c), (d) added by the Enterprise Act 2002 Sch 17 paras 9, 31(1), (3)). The addition of these provisions does not apply where a petition for an administration order has been presented prior to 15 September 2003 or in respect of special administration regimes: Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2, 3.

6 le under the Insolvency Act 1986 Sch B1 para 14 (as added) or Sch B1 para 22 (as added).

7 Ibid s 245(3)(d) (as added: see note 5 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(iv) Avoidance of Certain Floating Charges/864. Payment at time of creation.

864. Payment at time of creation.

The question whether or not the consideration for the creation of the charge moved to the company at the same time as¹ the creation of the charge depends in the first instance on the question when the charge was created. In equity a floating charge is created by a contract evidenced in writing and for valuable consideration to execute, when required, a formal mortgage by way of floating charge². Thus, if the charge is created by such a contract, the date of that charge will be the relevant date for deciding whether the relevant consideration moved at the same time as the creation of the charge, notwithstanding the fact that formal charge documents are not drawn up or executed until a subsequent date. The consideration must move to the company contemporaneously with the creation of the charge, or the time by which it precedes the creation must be *de minimis*³.

1 See the Insolvency Act 1986 s 245(2)(a), (b); and para 862 ante.

2 *Re Shoe Lace Ltd, Power v Sharp Investments Ltd* [1993] BCC 609 at 615, CA, referring to *Re Jackson & Bassford Ltd* [1906] 2 Ch 467 at 477 (where the court distinguished between an agreement to give security which was so expressed as to create a present equitable right to a security (which was registrable) and an agreement to give security which was so expressed as to be merely an agreement that in some future circumstances a security should in the future be created. In the event that a charge is created, it will be void against the liquidator and any creditor of the company unless it is registered within 21 days of its date of creation: see the Companies Act 1985 s 395 (as amended)).

3 *Re Shoe Lace Ltd, Power v Sharp Investments Ltd* [1993] BCC 609 at 619, CA, per Sir Christopher Slade (giving the example of a 'coffee break') and at 625 per Ralph Gibson LJ; although Nolan LJ at 624 reserved his decision on the precise meaning of 'at the same time as', he decided that some degree of latitude might be permissible to take account of such matters as urgency, international transactions across different time zones and other factors which might make it difficult to determine at what precise time money was paid or a charge created.

Under the Companies Act 1948 s 322 (repealed) and earlier corresponding provisions, the payment need not have been unconditional for the floating charge to have been valid, and the payment could have been on the terms that it was to be used to extinguish an existing liability of the company: *Re Matthew Ellis Ltd* [1933] Ch 458, CA, disapproving a dictum in *Re Hayman, Christy and Lilly Ltd, Christy v Hayman, Christy and Lilly Ltd* [1917] 1 Ch 283. See also *Revere Trust Ltd v Wellington Handkerchief Works Ltd* [1931] NI 55, CA. See para 862 ante. The payment must not, however, have been illusory: *Re Orleans Motor Co Ltd* [1911] 2 Ch 41; *Re Matthew Ellis Ltd* [1933] Ch 458, CA. A payment to the payee of a company's bill of exchange was not a payment of cash to the company (*Re WG McCleave & Co Ltd* (1913) 47 ILT 214), but a payment to meet a cheque drawn by the company was such a payment (*Re Yeovil Glove Co Ltd* [1965] Ch 148, [1964] 2 All ER 849, CA). Nor must the payment have been made to benefit certain creditors of the company at the expense of others: *Re Destone Fabrics Ltd* [1941] Ch 319, [1941] 1 All ER 545, CA. Where a floating charge was given within 12 months before the winding up to a bank to secure loan and current accounts, and no advances were made after its issue on the loan account, it was valid only as to advances on the current account made after the date of charge and owing at the date of the winding up: *Re Hayman, Christy and Lilly Ltd, Christy v Hayman, Christy and Lilly Ltd* supra. A floating charge was invalid where its creation was in substance no more than the substitution of a secured for an unsecured debt, or of a better for an existing security; underhand conduct on the part of the chargee was unnecessary: *Re GT Whyte & Co Ltd* [1983] BCLC 311. It is unclear whether these cases remain authoritative under the Insolvency Act 1986 s 245 (as amended).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(iv) Avoidance of Certain Floating Charges/865. Goods or services supplied.

865. Goods or services supplied.

The value of any goods or services supplied by way of consideration for a floating charge¹ is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which they were supplied to the company².

1 See para 862 ante.

2 Insolvency Act 1986 s 245(6).

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/866. Disclaimer of onerous property.

(v) Disclaimer; Vesting Orders

866. Disclaimer of onerous property.

The liquidator of a company that is being wound up in England and Wales may, by the giving of the prescribed notice¹, disclaim any onerous property² and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it³.

Where:

- 1241 (1) a company which is being wound up is as a result of one or more assignments the tenant of part only of the premises demised by a tenancy; and
- 1242 (2) the liquidator exercises his power to disclaim property⁴ demised by the tenancy,

the power is exercisable only in relation to the part of the premises referred to in head (1) above⁵.

1 As to the prescribed notice see para 869 post.

2 For the meaning of 'onerous property' see para 867 post.

3 Insolvency Act 1986 s 178(1), (2).

4 Ie under ibid s 178: see the text to notes 1-3 supra.

5 Landlord and Tenant (Covenants) Act 1995 s 21(2). Section 21 applies to any tenancy which is a new tenancy, ie a tenancy granted on or after 1 January 1996 otherwise than in pursuance of an agreement entered into before that date or an order of a court made before that date: s 1(3). Without prejudice to its generality, s 1(3) applies to the grant of a tenancy where by virtue of any variation of a tenancy there is a deemed surrender and re-grant as it applies to any other grant of a tenancy: s 1(5). Where a tenancy granted on or after 1 January 1996 is so granted in pursuance of an option granted before that date, the tenancy is regarded for the purposes of s 1(3) as granted in pursuance of an agreement entered into before that date (and accordingly is not a new tenancy), whether or not the option was exercised before that date: s 1(6). For these purposes, 'option' includes right of first refusal: s 1(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/867. Meaning of 'onerous property'.

867. Meaning of 'onerous property'.

Onerous property¹ comprises any unprofitable contract, and any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act².

¹ le for the purpose of the disclaimer provisions in the Insolvency Act 1986 s 178: see para 866 ante. A waste management licence which confers on its holder an exemption from the offences prohibited under the Environmental Protection Act 1990 s 33 (as amended) (which are concerned with the keeping and depositing of controlled waste: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 655) is 'onerous property' for these purposes and is disclaimable: *Re Celtic Extraction Ltd (in liquidation)* [2001] Ch 475, [1999] 4 All ER 684. See also *Re Willmott Trading Ltd (in liquidation) (Nos 1 and 2)* [1999] 2 BCLC 541 (decided before the decision of the Court of Appeal in *Re Celtic Extraction Ltd* supra).

² Insolvency Act 1986 s 178(3). Cf *Re Potters Oils Ltd* [1985] BCLC 203 (decided under the Companies Act 1948 s 323 (repealed)).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

867 Meaning of 'onerous property'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--See *Environment Agency v Hillridge Ltd* [2003] EWHC 3023 (Ch), [2004] JPL 1258 (company disclaiming onerous property no longer has rights in respect of such property).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/868. Effect of disclaimer.

868. Effect of disclaimer.

A disclaimer of onerous property¹ operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but it does not operate, except so far as is necessary for the purpose of releasing the company from any liability, so as to affect the rights or liabilities of any other person². Thus a disclaimer by a liquidator of a lease³ assigned to a company renders the assignor liable under his covenants for rent due after liquidation⁴. Further, where the company is the original tenant, the liability of persons who have guaranteed the due payment of rent under the lease and the performance of other covenants contained in it is not affected by the disclaimer⁵.

1 For the meaning of 'onerous property' see para 867 ante.

2 Insolvency Act 1986 s 178(4). Failure to disclaim a contract does not make a liquidator personally liable on it: *Stead, Hazel & Co v Cooper* [1933] 1 KB 840. A disclaimer does not extend to the undoing of contractual rights and benefits which have already been vested: *Capital Prime Properties plc v Worthgate Ltd (in liquidation)* [2000] 1 BCLC 647. As to disclaimer generally see LANDLORD AND TENANT vol 27(1) (2006 Reissue) para 642 et seq.

3 See further para 874 post.

4 *Warnford Investments Ltd v Duckworth* [1979] Ch 127, [1978] 2 All ER 517.

5 *Hindcastle Ltd v Barbara Attenborough Associates Ltd* [1997] AC 70, [1996] 1 All ER 737, HL, overruling *Stacey v Hill* [1901] 1 KB 660, CA (a bankruptcy case). In order to avoid the effect of the latter decision, leases sometimes included a clause to the effect that, in the event of disclaimer, a surety would take a new lease; such clauses are valid: *Re Yarmarine (IW) Ltd* [1992] BCLC 276, [1992] BCC 28; *Murphy v Sawyer-Hoare (Stacey and Bowie, third parties)* [1993] 2 EGLR 61, [1994] 2 BCLC 59. The notice requiring the surety to take a new lease does not need to comply with the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended) (which requires contracts for the sale of land to be signed and in writing) (see SALE OF LAND vol 42 (Reissue) para 29): *Active Estates Ltd v Parness* [2002] EWHC 893 (Ch), [2002] BPIR 865. Where a head lease is disclaimed, then as between sub-landlord and sub-tenant, the head lease is to be treated as still in existence, although the landlord retains the right to distrain for rent and forfeit in the event that the terms of the disclaimed head lease are not complied with: *Re AE Realisations (1985) Ltd* [1987] 3 All ER 83, [1988] 1 WLR 200; cf *Pellicano v MEPC plc* [1994] 1 EGLR 104; *Hill v Griffin* [1987] 1 EGLR 81, CA. See also *Re Park Air Services plc, Christopher Moran Holdings Ltd v Bairstow* [2000] 2 AC 172, [1999] 1 All ER 673, HL. A surety is liable to the holder of the reversion where the reversion has been assigned after the date of the disclaimer: *Scottish Widows plc v Tripipatkul* [2003] EWHC 1874 (Ch), [2004] 1 P & CR 461, [2003] BPIR 1413.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/869. Liquidator's notice of disclaimer.

869. Liquidator's notice of disclaimer.

Where the liquidator disclaims property¹, the notice of disclaimer must contain such particulars of the property disclaimed as enable it to be easily identified². The notice must be signed by the liquidator and filed in court³, with a copy; and the court must secure that both the notice and the copy are sealed and indorsed with the date of filing⁴.

The copy notice, so sealed and indorsed, must be returned by the court to the liquidator as follows:

- 1243 (1) if the notice has been delivered at the offices of the court by the liquidator in person, it must be handed to him⁵;
- 1244 (2) if it has been delivered by some person acting on the liquidator's behalf, it must be handed to that person, for immediate transmission to the liquidator⁶; and
- 1245 (3) otherwise, it must be sent to the liquidator by first class post⁷,

and the court must cause to be indorsed on the original notice, or otherwise recorded on the file, the manner in which the copy notice was returned to the liquidator⁸.

The date of the prescribed notice⁹ is that which is indorsed on it, and on the copy, in accordance with these provisions¹⁰.

1 le under the Insolvency Act 1986 s 178: see para 866 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.187(1). As to the prescribed form of notice of disclaimer under the Insolvency Act 1986 s 178 see the Insolvency Rules 1986, SI 1986/1925, rr 4.187, 12.7, Sch 4 Form 4.53 (substituted by SI 1987/1919). In *MEPC plc v Scottish Amicable Life Assurance Society* (1993) 67 P & CR 314, [1996] BPIR 447, CA, a notice of disclaimer which purported to disclaim a documentary licence was held effective as a disclaimer of the lease itself.

3 For the meaning of 'file in court' see para 129 note 3 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.187(2).

5 Ibid r 4.187(2)(a).

6 Ibid r 4.187(2)(b).

7 Ibid r 4.187(2)(c).

8 Ibid r 4.187(3).

9 le for the purposes of the Insolvency Act 1986 s 178.

10 Insolvency Rules 1986, SI 1986/1925, r 4.187(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

869 Liquidator's notice of disclaimer

TEXT AND NOTES 3-8--SI 1986/1925 r 4.187(2) substituted, r 4.187(3A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/870. Communication of disclaimer to persons interested.

870. Communication of disclaimer to persons interested.

Within seven days after the day on which the copy of the notice of disclaimer is returned to him by the court¹, the liquidator must send or give copies of the notice, showing the date indorsed by the court², to the following persons³:

- 1246 (1) where the property disclaimed is of a leasehold nature, he must send or give a copy of the notice to every person who, to his knowledge, claims under the company as underlessee or mortgagee⁴;
- 1247 (2) he must in any case send or give a copy of the notice to every person who, to his knowledge, claims an interest in the disclaimed property, or is under any liability in respect of the property, not being a liability discharged by the disclaimer⁵;
- 1248 (3) if the disclaimer is of an unprofitable contract, he must send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it⁶.

If subsequently it comes to the liquidator's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of these provisions, the liquidator must then forthwith send or give to that person a copy of the notice; but compliance with this provision is not required if the liquidator is satisfied that the person has already been made aware of the disclaimer and its date, or the court, on the liquidator's application, orders that compliance is not required in that particular case⁷.

The liquidator disclaiming property may⁸, at any time, give notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of it⁹.

1 Ie under the Insolvency Rules 1986, SI 1986/1925, r 4.187: see para 869 ante.

2 Ie as required by *ibid* r 4.187.

3 *Ibid* r 4.188(1). As to the prescribed form of notice of disclaimer and the relevant indorsements by the court and the liquidator see rr 4.188, 12.7, Sch 4 Form 4.53 (substituted by SI 1987/1919).

4 Insolvency Rules 1986, SI 1986/1925, r 4.188(2). See further para 874 post.

5 *Ibid* r 4.188(3).

6 *Ibid* r 4.188(4).

7 *Ibid* r 4.188(5). As to the making of applications see para 1055 et seq post.

8 Ie without prejudice to his obligations under the Insolvency Act 1986 ss 178-180 (see paras 866-868 ante, 872, 874, 879-880 post) and under the Insolvency Rules 1986, SI 1986/1925, rr 4.187, 4.188 (see the text to notes 1-7 supra; and para 869 ante).

9 *Ibid* r 4.189.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

870 Communication of disclaimer to persons interested

TEXT AND NOTES 1-3--SI 1986/1925 r 4.188(1) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/871. Duty to keep court informed.

871. Duty to keep court informed.

The liquidator must notify the court from time to time as to the persons to whom he has sent or given copies of the notice of disclaimer¹, giving their names and addresses, and the nature of their respective interests².

1 Ie under the Insolvency Rules 1986, SI 1986/1925, rr 4.188, 4.189: see para 870 ante.

2 Ibid r 4.190.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

871 Duty to keep court informed

TEXT AND NOTES--SI 1986/1925 r 4.190 substituted by r 4.190A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/872. Application requiring the liquidator to decide whether or not to disclaim.

872. Application requiring the liquidator to decide whether or not to disclaim.

A notice of disclaimer may not be given¹ in respect of any property if a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not², and the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given in respect of that property³. Such an application must be delivered to the liquidator personally or by registered post, and must be made in the form known as 'notice to elect', or a substantially similar form⁴.

1 As to the giving of notices of disclaimer see para 866 et seq ante.

2 Insolvency Act 1986 s 178(5)(a).

3 Ibid s 178(5)(b).

4 Insolvency Rules 1986, SI 1986/1925, r 4.191. As to the prescribed form of a 'notice to elect' see rr 4.191, 12.7, Sch 4 Form 4.54.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

872 Application requiring the liquidator to decide whether or not to disclaim

TEXT AND NOTES--SI 1986/1925 r 4.191 substituted by r 4.191A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/873. Interest in property to be declared on request.

873. Interest in property to be declared on request.

If, in the case of property which the liquidator has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it¹. Failing compliance with the notice, the liquidator is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer².

¹ Insolvency Rules 1986, SI 1986/1925, r 4.192(1). As to the prescribed form of notice of intended disclaimer to an interested party see rr 4.192, 12.7, Sch 4 Form 4.55.

² Ibid r 4.192(2).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/874. Disclaimer of leaseholds.

874. Disclaimer of leaseholds.

The disclaimer¹ of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served, so far as the liquidator is aware of their addresses, on every person claiming under the company as underlessee or mortgagee² and either no application is made for a vesting order³ with respect to that property before the end of the period of 14 days beginning with the day on which the last notice of disclaimer was served⁴; or, where such an application has been made, the court directs that the disclaimer is to take effect⁵. Where the court gives such a direction, it may also, instead of or in addition to any order it makes⁶, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit⁷.

1 Ie under the Insolvency Act 1986 s 178: see para 866 et seq ante.

2 See para 870 ante.

3 Ie under the Insolvency Act 1986 s 181: see para 876 post.

4 Ibid s 179(1)(a).

5 Ibid s 179(1)(b).

6 See note 3 supra.

7 Insolvency Act 1986 s 179(2). See further para 878 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/875. Order rescinding contract.

875. Order rescinding contract.

On the application¹ of a person, who, as against the liquidator, is entitled to the benefit or subject to the burden of a contract made with the company, the court may make an order rescinding the contract on such terms as to payment by or to either party of damages for non-performance of the contract, or otherwise, as it thinks just²; and any damages payable under the order to any such person may be proved by him as a debt in the winding up³.

1 As to the making of applications see para 1055 et seq post.

2 Insolvency Act 1986 s 186(1).

3 Ibid s 186(2). As to proof of debts see para 749 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/876. Orders vesting disclaimed property; in general.

876. Orders vesting disclaimed property; in general.

Where the liquidator has disclaimed property¹, an application may be made to the court² by any person who claims an interest in the disclaimed property³ or who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer⁴, and on such an application the court may make an order on such terms as it thinks fit⁵ for the vesting of the disclaimed property in, or for its delivery to:

- 1249 (1) a person entitled to it or a trustee for such a person⁶; or
- 1250 (2) a person subject to such a liability or a trustee for such a person⁷.

The court may not, however, make an order in favour of the persons referred to in head (2) above except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer⁸.

Such an order vesting property in any person need not be completed by conveyance, assignment or transfer⁹.

1 Under the Insolvency Act 1986 s 178: see para 866 et seq ante. As to the position where the disclaimed property is of a leasehold nature see para 877 post.

2 As to the making of applications see para 878 et seq post.

3 Insolvency Act 1986 s 181(1), (2)(a). A person in occupation of premises of which he had agreed to take an assignment, subject to the consent of the landlord, did not have an 'interest' in the disclaimed property within the meaning of the Insolvency Act 1986 s 181(2)(a): *Lloyds Bank SF Nominees v Aladdin Ltd (in liquidation)* [1996] 1 BCLC 720, CA. Statutory tenants have a sufficient interest to apply pursuant to the Insolvency Act 1986 s 181: *Re Vedmay Ltd* (1993) 69 P & CR 247, [1994] 1 BCLC 676.

4 Insolvency Act 1986 s 181(2)(b). A person whose liability is as guarantor of a company's debts to its bank, the disclaimed property being initially subject to a charge securing the company's indebtedness, is not 'under any liability in respect of the disclaimed property' within the meaning of s 181(2)(b): *Re Spirit Motorsport Ltd (in liquidation)* [1996] 1 BCLC 684.

5 As to the power of the court to make an order on such terms as it thinks fit see *Beegas Nominees Ltd v BHP Petroleum Ltd* (1998) 77 P & CR 14, [1998] BPIR 543, CA.

6 Insolvency Act 1986 s 181(3)(a). Whilst the landlord of a lease disclaimed by the head lessee has an interest in the disclaimed property, he is not entitled to the property, within the meaning of s 181(3)(a), where there are sub-tenants, since the sub-tenants are entitled to possession of the disclaimed property: hence, such a landlord has no right to a vesting order: *Re ITM Corp Ltd (in liquidation)*, *Sterling Estates v Pickard UK Ltd (formerly Paxus Professional Systems Ltd)* [1997] 2 BCLC 389, [1997] BCC 554.

7 Insolvency Act 1986 s 181(3)(b).

8 Ibid s 181(4). As to the exercise of the court's discretion to make a vesting order under the analogous provision in the Companies Act 1985 s 619(5) (repealed) see *Re AE Realisations (1985) Ltd* [1987] 3 All ER 83, [1988] 1 WLR 200.

9 Insolvency Act 1986 s 181(6). The effect of any order under s 181 must be taken into account in assessing for the purpose of s 178(6) (see para 879 post) the extent of any loss or damage sustained by any person in consequence of the disclaimer: s 181(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/877. Vesting of disclaimed property; leases.

877. Vesting of disclaimed property; leases.

The court may not make an order¹ vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person:

- 1251 (1) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up²; or
- 1252 (2) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up³.

For the purposes of an order relating to only part of any property comprised in a lease, these conditions apply as if the lease comprised only the property to which the order relates⁴.

Where these conditions apply and no person claiming under the company as underlessee or mortgagee is willing to accept a vesting order on the terms required which satisfy the specified conditions, the court may, by order, vest the company's estate or interest in the property in any person who is liable, whether personally or in a representative capacity, and whether alone or jointly with the company, to perform the lessee's covenants in the lease; and the court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company⁵. Where these conditions apply and a person claiming under the company as underlessee or mortgagee declines to accept any vesting order, that person is excluded from all interest in the property⁶.

1 Ie under the Insolvency Act 1986 s 181: see para 876 ante.

2 Ibid s 182(1)(a).

3 Ibid s 182(1)(b).

4 Ibid s 182(2).

5 Ibid s 182(3).

6 Ibid s 182(4). Section 182(4) does not apply to statutory tenants who may continue to rely on their statutory rights: *Re Vedmay Ltd* [1994] 1 BCLC 676, (1993) 69 P & CR 247.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/878. Application for vesting order.

878. Application for vesting order.

An application by any person for an order of the court to vest or deliver disclaimed property¹ must be made within three months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the liquidator's notice of disclaimer², whichever is the earlier³.

With his application, the applicant must file in court⁴ an affidavit:

- 1253 (1) stating whether he applies as a person who claims an interest in the disclaimed property⁵ or as a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer⁶;
- 1254 (2) specifying the date on which he received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer⁷; and
- 1255 (3) specifying the grounds of his application and the order which he desires the court to make⁸.

The court must fix a venue⁹ for the hearing of the application; and the applicant must, not later than seven days before the date fixed, give to the liquidator notice of the venue, accompanied by copies of the application and the affidavit in support¹⁰.

On the hearing of the application, the court may give directions as to other persons, if any, who should be sent or given notice of the application and the grounds on which it is made¹¹; and sealed copies of any order made on the application must be sent by the court to the applicant and the liquidator¹².

In a case where the property disclaimed is of a leasehold nature, and the effect of the disclaimer is suspended¹², a direction must be included in the court's order giving effect to the disclaimer, unless, at the time when the order is issued, other applications for vesting orders are pending in respect of the same property¹³.

1 Ie under the Insolvency Act 1986 s 181: see para 876 ante.

2 Ie a notice sent under the Insolvency Rules 1986, SI 1986/1925, r 4.188: see para 870 ante.

3 Ibid r 4.194(1), (2).

4 For the meaning of 'file in court' see para 129 note 3 ante.

5 Ie under the Insolvency Act 1986 s 181(2)(a): see para 876 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 4.194(3)(a). Such applications are made under the Insolvency Act 1986 s 181(2)(b): see para 876 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 4.194(3)(b).

8 Ibid r 4.194(3)(c).

9 For the meaning of 'venue' see para 91 note 7 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 4.194(4).

11 Ibid r 4.194(5).

- 12 Ibid r 4.194(6).
- 13 le under the Insolvency Act 1986 s 179: see para 874 ante.
- 14 Insolvency Rules 1986, SI 1986/1925, r 4.194(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/879. Rights of persons injured by disclaimer.

879. Rights of persons injured by disclaimer.

Any person sustaining loss or damage in consequence of the operation of a disclaimer¹ is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up².

¹ See under the Insolvency Act 1986 s 178: see para 866 et seq ante.

² Ibid s 178(6). The effect of any vesting order must be taken into account in assessing the extent of any loss or damage sustained by a person in consequence of the disclaimer: see s 181(5); and para 876 ante. The Insolvency Rules 1986, SI 1986/1925, r 11.13 (see para 826 ante) normally has no application to proofs for injury caused by disclaimer, as a right to statutory compensation is due immediately upon disclaimer: *Re Park Air Services plc, Christopher Moran Holdings Ltd v Bairstow* [2000] 2 AC 172, [1999] 1 All ER 673, HL. As to proofs of debt see para 775 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/880. Property vesting in the Crown.

880. Property vesting in the Crown.

Where, in consequence of the disclaimer¹ of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person ('the proprietor'), the proprietor and the proprietor's successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it².

¹ See under the Insolvency Act 1986 s 178: see para 866 et seq ante.

² Ibid s 180(1), (2). This provision debars the owner of the rentcharge, except as mentioned in the text, from suing the Crown or other mesne landlord personally in respect of the rentcharge, but does not affect his rights against the land. It also applies to land subject to a rentcharge which is owned by a dissolved company, and vests as bona vacantia (see para 933 post), or which is disclaimed by the Crown (see para 935 post).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(v) Disclaimer; Vesting Orders/881. Disclaimer presumed valid and effective.

881. Disclaimer presumed valid and effective.

Any disclaimer of property by the liquidator is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under the relevant provisions¹.

¹ Insolvency Rules 1986, SI 1986/1925, r 4.193. The provisions referred to are the Insolvency Act 1986 ss 178-180 and the Insolvency Rules 1986, SI 1986/1925, rr 4.187-4.194: see para 866 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(vi) Execution and Attachment/882. Restrictions on creditors' rights in general.

(vi) Execution and Attachment

882. Restrictions on creditors' rights in general.

Where a creditor has issued execution¹ against the goods² or land of a company or has attached any debt due to the company and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator in the winding up unless he has completed³ the execution or attachment before the commencement⁴ of the winding up⁵. The benefit of the execution or attachment does not include money received by the creditor under it, but means the benefit of the charge which the creditor obtains by the issue of the execution or attachment⁶.

The rights so conferred on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit⁷; and a person who purchases in good faith under a sale by the enforcement officer⁸ or other officer charged with the execution of the writ any goods of a company on which execution has been levied acquires in all cases a good title to them against the liquidator⁹.

For the purposes of these provisions, an execution against goods is completed by seizure and sale, or by the making of a charging order¹⁰; an attachment of a debt is completed by receipt of the debt¹¹; and an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order¹².

The effect of winding up as regards execution afterwards put in force is considered elsewhere in this title¹³.

1 The arrest of a ship is not execution for this purpose: *The Zafiro* [1960] P 1, [1959] 2 All ER 537.

2 For these purposes, 'goods' includes all chattels personal: Insolvency Act 1986 s 183(4).

3 If the proceeds are in the enforcement officer's hands, the execution is not completed; thus the creditor's right to receive the money is divested by the liquidation, and the enforcement officer is under a duty to account instead to the liquidator: *Bluston and Bramley Ltd v Leigh* [1950] 2 KB 548, [1950] 2 All ER 29. The powers of the enforcement officer were formerly vested in the sheriff. As to the enforcement officer see note 8 infra.

4 As to the commencement of the winding up see para 489 ante. If any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice must be substituted, for the purposes of the Insolvency Act 1986 s 183(1) (as amended), for the date of the commencement of the winding up: s 183(2)(a). Section 183(2)(a) does not apply in the case of a winding up in relation to a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

5 Insolvency Act 1986 s 183(1). See also *Re Walkden Sheet Metal Co Ltd* [1960] Ch 170, [1959] 3 All ER 333 (money paid to avoid sale not part of benefit of execution). A charging or garnishee order nisi (now called a third party debt order) will not be converted into an absolute order where the company has gone into liquidation: *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 AC 192, [1983] 1 All ER 564, HL; and see *D Wilson (Birmingham) Ltd v Metropolitan Property Developments Ltd* [1975] 2 All ER 814, CA. The Insolvency Act 1986 s 183(1) (as amended) does not apply to distress by a landlord: see *Re Bellaglade Ltd* [1977] 1 All ER 319; but see further para 887 et seq post. The Insolvency Act 1986 s 183 (as amended) has no extra-territorial effect: *Mitchell v Carter, Re Buckingham International plc* [1997] 1 BCLC 673, [1997] BCC 71, CA. An English court does, however, have jurisdiction to decide whether the fruits of foreign garnishment proceedings (analogous to English third party debt orders) should be retained by the garnishees: *Mitchell v Carter, Re*

Buckingham International plc supra. It seems that, whilst a liquidator may have standing to apply to set aside a charging order absolute as a person 'interested' under the Charging Orders Act 1979 s 3(5) (see CIVIL PROCEDURE vol 12 (2009) PARA 1484), any such application would ordinarily fail by reason of the Insolvency Act 1986 s 183 (as amended): *Banque Nationale de Paris plc v Montman Ltd* [2000] 1 BCLC 576.

6 *Re Caribbean Products (Yam Importers) Ltd, Tickler v Swain's Packaging Ltd* [1966] Ch 331, [1966] 1 All ER 181, CA, following *Re Andrew, ex p Official Receiver (Trustee) (No 2)* [1937] Ch 122, [1936] 3 All ER 450, and overruling *Re Rainbow Tours Ltd* [1964] Ch 66, [1963] 2 All ER 820.

7 Insolvency Act 1986 s 183(2)(c). The court's discretion is completely unfettered: see *Re Grosvenor Metal Co Ltd*, as reported in [1950] Ch 63 at 65; *Re Suidair International Airways Ltd* [1951] Ch 165 at 171, [1950] 2 All ER 920 at 923; *Re Redman (Builders) Ltd* [1964] 1 All ER 851, [1964] 1 WLR 541, following *Re Vron Colliery Co* (1882) 20 ChD 442, CA; *Re Caribbean Products (Yam Importers) Ltd, Tickler v Swain's Packaging Ltd* [1966] Ch 331, [1966] 1 All ER 181, CA. The policy behind the Insolvency Act 1986 s 183 (as amended) was applied where the creditors sought execution against assets of an English company situated overseas (and thus s 183 did not apply): *Mitchell v Buckingham International plc (in liquidation)*, *Re Buckimgham International plc (in liquidation) (No 2)* [1998] 2 BCLC 369. The circumstances must be exceptional before the rights of the liquidator will be set aside: *Mitchell v Buckingham International plc (in liquidation)*, *Re Buckimgham International plc (in liquidation) (No 2)* supra.

8 For these purposes, 'enforcement officer' means an individual who is authorised to act under the Courts Act 2003: Insolvency Act 1986 s 183(4) (amended by the Courts Act 2003 s 109(1), Sch 8 para 295(1), (3)).

9 Insolvency Act 1986 s 183(2)(b) (amended by the Courts Act 2003 Sch 8 para 295(1), (2)).

10 Insolvency Act 1986 s 183(3)(a). Charging orders are made under the Charging Orders Act 1979 s 1 (as amended): see CIVIL PROCEDURE vol 12 (2009) PARA 1467 et seq.

11 Insolvency Act 1986 s 183(3)(b).

12 Ibid s 183(3)(c). See *Re Overseas Aviation Engineering (GB) Ltd* [1963] Ch 24, [1962] 3 All ER 12, CA; *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 AC 192, [1983] 1 All ER 564, HL.

13 See para 888 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

882 Restrictions on creditors' rights in general

TEXT AND NOTE 1--Distraint against goods for unpaid tax under the Taxes Management Act 1970 s 61 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1815) is not execution within the 1986 Act s 183(1): *Re Modern Jet Support Centre Ltd* [2005] EWHC 1611 (Ch), [2005] 1 WLR 3880.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(vi) Execution and Attachment/883. Restrictions on creditors' rights in relation to Scottish assets.

883. Restrictions on creditors' rights in relation to Scottish assets.

Where a company registered in England and Wales which is being wound up has any estate or effects situated in Scotland, then as from the commencement of the winding up¹, the order of the court awarding winding up has effect, in relation to diligence done, whether before or after the date of winding up, in respect of any part of the company's estate, of:

- 1256 (1) a decree of adjudication of the heritable estate of the company for payment of its debts which has been duly recorded in the register of inhibitions and adjudications on that date²; and
- 1257 (2) an arrestment in execution and decree of furthcoming, an arrestment in execution and warrant of sale, and a completed poinding³,

in favour of the creditors according to their respective entitlements. No inhibition on the estate of the company which takes effect within the period of 60 days before the date of winding up is effectual to create a preference for the inhibitor; and any relevant right of challenge⁴ vests, at the date of winding up, in the liquidator, as does any right of the inhibitor to receive payment for the discharge of the inhibition⁵.

No arrestment or attachment of the estate of the company, including any estate vesting in the liquidator⁶, executed within the period of 60 days before the date of winding up and whether or not subsisting at that date, or on or after the date of winding up, is effectual to create a preference for the arrester or attacher; and the estate so arrested or attached or the proceeds of sale thereof, must be handed over to the liquidator⁷. An arrester or attacher whose arrestment or attachment is executed within such period of 60 days is entitled to payment, out of the arrested or attached estate or out of the proceeds of sale thereof, of the expenses incurred:

- 1258 (a) in obtaining the extract of the decree or other document on which the arrestment or attachment proceeded⁸;
- 1259 (b) in executing the arrestment or attachment⁹; and
- 1260 (c) in taking any further action in respect of diligence¹⁰.

No poinding of the ground in respect of the estate of the company, including any estate vesting in the liquidator¹¹, executed within the period of 60 days before the date of the winding up or on or after that date is effectual, in a question with the liquidator, except for the interest on the debt of a secured creditor, being interest for the current half-yearly term and arrears of interest for one year immediately before the commencement of that term¹².

Any sale of the company's estate by the liquidator may be by either public sale or private bargain¹³. The following rules apply to the sale of any part of the company's heritable estate over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the liquidator:

- 1261 (i) the liquidator may sell that part only with the concurrence of every such creditor unless he obtains a sufficiently high price to discharge every such security¹⁴;

- 1262 (ii) subject to head (iii) below, the taking of steps by a creditor to enforce his security over that part after the liquidator has intimated to the creditor that he intends to sell it, and the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that he intends to commence the procedure for its sale, are precluded¹⁵;
- 1263 (iii) where the liquidator or a creditor has given intimation under head (ii) above, but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of intimation under head (i) above, any creditor to whom intimation has been given may enforce his security, or in the case of head (ii) above, the liquidator may sell that part¹⁶.

The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with any of the statutory requirements relating to the management and realisation of assets¹⁷. It is incompetent for the liquidator or an associate of his or for any commissioner to purchase any of the company's estate in pursuance of those requirements¹⁸.

1 For these purposes, 'the commencement of the winding up of the company' means, where it is being wound up by the court, the day on which the winding-up order is made: Insolvency Act 1986 s 185(3).

2 Bankruptcy (Scotland) Act 1985 s 37(1)(a); Insolvency Act 1986 s 185(1)(a), (2)(a)-(c), (4).

3 Bankruptcy (Scotland) Act 1985 s 37(1)(b); Insolvency Act 1986 s 185(1)(a), (4).

4 For these purposes, 'any relevant right of challenge' means any right to challenge a deed voluntarily granted by the company, if it is a right which vested in the inhibitor by virtue of the inhibition: Bankruptcy (Scotland) Act 1985 s 37(3); Insolvency Act 1986 s 185(1)(a), (2)(a), (4).

5 Bankruptcy (Scotland) Act 1985 s 37(2); Insolvency Act 1986 s 185(1)(a), (2)(a)-(c), (4). This provision does not, however, entitle the liquidator to receive any payment made to the inhibitor before that date of winding up; nor does it affect the validity of any thing done before that date in consideration of such payment: Bankruptcy (Scotland) Act 1985 s 37(2) proviso; Insolvency Act 1986 s 185(1)(a), (2)(b)-(d), (4).

6 *Ie* under the Bankruptcy (Scotland) Act 1985 s 32(6).

7 *Ibid* s 37(4) (s 37(4), (5)(a), (b) amended by the Debt Arrangement and Attachment (Scotland) Act 2002 s 61, Sch 3 para 15(1), (4)); Insolvency Act 1986 s 185(1)(a), (2)(a)-(d), (4). Nothing in the Bankruptcy (Scotland) Act 1985 s 37(4) (as amended) or s 37(5) (as amended) (see the text and notes 8-10 *infra*) applies to an earnings arrestment, a current maintenance arrestment, a conjoined arrestment order or a deduction from earnings order under the Child Support Act 1991: Bankruptcy (Scotland) Act 1985 s 37(5A) (added by the Debtors (Scotland) Act 1987 s 108(1), Sch 6 para 27; and amended by the Child Support Act 1991 s 58(13), Sch 5 para 6(1), (3)); Insolvency Act 1986 s 185(1)(a), (4).

8 Bankruptcy (Scotland) Act 1985 s 37(5)(a) (as amended: see note 7 *supra*); Insolvency Act 1986 s 185(1)(a), (4). Cf *Johnston v Cluny Estates Trustees* 1957 SLT 293, Ct of Sess. See also note 7 *supra*.

9 Bankruptcy (Scotland) Act 1985 s 37(5)(b) (as amended: see note 7 *supra*); Insolvency Act 1986 s 185(1)(a), (4). See also note 7 *supra*.

10 Bankruptcy (Scotland) Act 1985 s 37(5)(c); Insolvency Act 1986 s 185(1)(a), (4). See also note 7 *supra*.

11 *Ie* under the Bankruptcy (Scotland) Act 1985 s 32(6).

12 *Ibid* s 37(6); Insolvency Act 1986 s 185(1)(a), (2)(a)-(d), (4).

13 Bankruptcy (Scotland) Act 1985 s 39(3); Insolvency Act 1986 s 185(1)(b), (2)(a), (d), (4).

14 Bankruptcy (Scotland) Act 1985 s 39(4)(a); Insolvency Act 1986 s 185(1)(b), (2)(a), (d), (4).

15 Bankruptcy (Scotland) Act 1985 s 39(4)(b); Insolvency Act 1986 s 185(1)(b), (2)(d), (4).

16 Bankruptcy (Scotland) Act 1985 s 39(4)(c); Insolvency Act 1986 s 185(1)(b), (2)(d), (4).

17 Bankruptcy (Scotland) Act 1985 s 39(7); Insolvency Act 1986 s 185(1)(b), (4). The statutory requirements relating to the management and realisation of assets are the requirements of the Bankruptcy (Scotland) Act 1985 s 39.

18 Ibid s 39(8); Insolvency Act 1986 s 185(1)(b), (2)(a), (d), (4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(vi) Execution and Attachment/884. Enforcement officer's duties under execution.

884. Enforcement officer's duties under execution.

Where any goods¹ of a company are taken in execution and, before their sale or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the enforcement officer² (or other officer) charged with the execution of the writ or other process³ that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed⁴, the enforcement officer or other officer must, on being so required, deliver to the liquidator the goods and any money seized or received in part satisfaction of the execution⁵; but the costs of the execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods or a sufficient part of them for the purpose of satisfying the charge⁶. The court may, however, set aside the rights thus conferred on the liquidator in favour of the creditor to such extent and subject to such terms as the court thinks fit⁷.

1 For these purposes, 'goods' includes all chattels personal: Insolvency Act 1986 s 184(6).

2 For these purposes, 'enforcement officer' means an individual who is authorised to act under the Courts Act 2003: Insolvency Act 1986 s 184(6) (s 184(1), (2), (6) amended by the Courts Act 2003 s 109(1), Sch 8 para 296).

3 A copy of a notice under the Insolvency Act 1986 s 98 calling the creditors' meeting (see para 945 post) is sufficient notice for this purpose: *Engineering Industry Training Board v Samuel Talbot (Engineers) Ltd* [1969] 2 QB 270, [1969] 1 All ER 480, CA.

4 Insolvency Act 1986 s 184(1) (as amended: see note 2 supra). In the case of a winding up in relation to a limited liability partnership, these provisions apply where the partnership has determined that it be wound up voluntarily: see s 184(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

5 Money paid to avoid sale is not received in part satisfaction of the execution for this purpose: see *Re Walkden Sheet Metal Co Ltd* [1960] Ch 170, [1959] 3 All ER 333.

6 Insolvency Act 1986 s 184(2) (as amended: see note 2 supra). The costs of execution refer only to the enforcement officer or other officers' costs and do not include the creditor's costs of issuing and serving the writ of fieri facias: *Re Woods (Bristol) Ltd* [1931] 2 Ch 320.

7 Insolvency Act 1986 s 184(5). As to the exercise of the court's discretion under this provision cf para 882 note 7 ante.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(vi) Execution and Attachment/885. Retention of proceeds after sale.

885. Retention of proceeds after sale.

Where, under an execution in respect of a judgment for a sum exceeding £500¹ the goods² of a company are sold, or money is paid in order to avoid a sale, the enforcement officer³ or other officer must deduct the costs of the execution from the proceeds of sale or the money paid, and retain the balance for 14 days⁴. If, within that time, notice⁵ is served on the enforcement officer or other officer of a winding-up petition having been presented, or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company, and an order is made or a resolution is passed, as the case may be⁶, for the winding up of the company, the enforcement officer or other officer must pay the balance to the liquidator, who is then entitled to retain it as against the execution creditor⁷, subject to the court's power to set aside his right in favour of the creditor to such extent and subject to such terms as the court thinks fit⁸.

1 The Secretary of State may by order in a statutory instrument increase or reduce the sum for the time being specified in the Insolvency Act 1986 s 184(3) (as amended); and such order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient: ss 184(7), 416(1), (2). A statutory instrument containing an order under s 416 is subject to annulment in pursuance of a resolution of either House of Parliament: s 416(4). The sum of £500 was substituted for the sum of £250 by the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996, art 2, Schedule Pt I. As to the Secretary of State see para 11 note 10 ante.

2 For the meaning of 'goods' see para 884 note 1 ante.

3 For the meaning of 'enforcement officer' see para 884 note 2 ante.

4 Insolvency Act 1986 s 184(3) (amended by the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996, art 2, Schedule Pt I s 184(3), (4); and by the Courts Act 2003 s 109(1), Sch 8 para 296(1), (3)). The 14 days commence from the date of payment by the company, not from the receipt of the money by the enforcement officer or other officer: *Re Walkden Sheet Metal Co Ltd* [1960] Ch 170, [1959] 3 All ER 333.

5 As to notice see para 884 note 3 ante.

6 The provision applies only if notice of a petition is followed by an order for compulsory winding up or notice of a meeting is followed by a resolution for voluntary winding up; it does not apply where notice of a meeting to be called to consider a resolution for voluntary winding up is followed by a resolution to wind up compulsorily (*Bluston and Bramley Ltd v Leigh* [1950] 2 KB 548, [1950] 2 All ER 29) or where the notice given is of a meeting which has not in fact been called (*Re TD Walton Ltd* [1966] 2 All ER 157, [1966] 1 WLR 869).

7 Insolvency Act 1986 s 184(4) (amended by the Courts Act 2003 Sch 8 para 296(1), (3)). This provision, being one which divests rights, must be strictly construed: *Re TD Walton Ltd* [1966] 2 All ER 157, [1966] 1 WLR 869. See also para 884 note 6 ante. In the case of a winding up in relation to a limited liability partnership, these provisions apply where a resolution is passed: see the Insolvency Act 1986 s 184(4); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

8 Insolvency Act 1986 s 184(5).

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(13) ADJUSTMENT OF PRIOR AND OTHER TRANSACTIONS/(vi) Execution and Attachment/886. Assessment of enforcement officer's costs.

886. Assessment of enforcement officer's costs.

Where an enforcement officer¹ is required to deliver up goods or money², or has deducted costs from the proceeds of an execution or money paid to him³, the liquidator may require in writing that the officer's bill of costs be decided by detailed assessment⁴. Where such a requirement is made, the enforcement officer must commence detailed assessment proceedings⁵ within three months of the requirement being made, or within such further time as the court, on application, may permit; and, if the enforcement officer fails to comply with this requirement, the liquidator may deal with the company's assets without regard to any claim by the officer, whose claim is forfeited⁶.

Where, in the case of a deduction of costs from the proceeds of an execution or money paid to him, any amount is disallowed at the conclusion of the detailed assessment proceedings, the enforcement officer must forthwith pay a sum equal to that amount to the liquidator for the benefit of the company's assets⁷.

1 An enforcement officer is an individual who is authorised to act under the Courts Act 2003: see the Insolvency Act 1986 s 184(6) (s 184(1), (2), (6) amended by the Courts Act 2003 s 109(1), Sch 8 para 296); and para 884 ante. The Insolvency Rules 1986, SI 1986/1925, r 7.36 (as substituted) refers to 'a sheriff' for these purposes but, by virtue of the amendments made to the Insolvency Act 1986 s 184 by the Courts Act 2003 (see para 884 ante), this should be read as referring to an enforcement or other officer.

2 Ie under the Insolvency Act 1986 s 184(2) (as amended): see para 884 ante.

3 Ie under ibid s 184(3) (as amended): see para 885 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 7.36(1) (rr 7.35, 7.36 substituted by SI 1999/1022). As to the general provisions relating to costs and assessment see the Insolvency Rules 1986, SI 1986/1925, rr 7.33-7.42 (as substituted); and para 1096 et seq post.

5 Ie under CPR Pt 47: see CIVIL PROCEDURE vol 12 (2009) PARA 1779 et seq.

6 Insolvency Rules 1986, SI 1986/1925, rr 7.35(4), 7.36(2), 13.8(a) (rr 7.35, 7.36 as substituted: see note 4 supra).

7 Ibid rr 7.36(3), 13.8(a) (r 7.36 as substituted: see note 4 supra).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

886 Assessment of enforcement officer's costs

NOTE 1--The reference to a sheriff is now to an enforcement officer: SI 1986/1925 r 7.36 (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/887. Power to stay or restrain proceedings.

(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE

(i) Proceedings by or against the Company

887. Power to stay or restrain proceedings.

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may, where any claim or proceeding¹ against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the claim or proceeding is pending for a stay of proceedings in it²; and, where any other claim or proceeding³ is pending against the company, may apply to the court having jurisdiction to wind up the company⁴ to restrain further proceedings in the claim or proceeding⁵. The court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit⁶.

An application to stay any proceedings in the High Court must be made to the division in which the matter is pending⁷, and may be made without notice⁸. All claims pending against the company in any division of the High Court may be stayed by a single order of that division⁹.

The jurisdiction to stay is discretionary¹⁰; and in its exercise regard must be had to the primary object of winding up, namely the collection and distribution of the assets *pari passu* among unsecured creditors after payment of preferential debts¹¹.

¹ This includes a distraint, whether by a landlord or the Crown: *Herbert Berry Associates Ltd v IRC* [1978] 1 All ER 161, [1977] 1 WLR 1437.

² Insolvency Act 1986 s 126(1)(a).

³ These words are general, not being limited to claims in England but extending also to actions in Scotland or Northern Ireland: *Re Dynamics Corp'n of America* [1972] 3 All ER 1046, [1973] 1 WLR 63.

⁴ As to the courts with jurisdiction to wind up companies see para 438 et seq ante.

⁵ Insolvency Act 1986 s 126(1)(b).

⁶ *Ibid* s 126(1). As to the restraining of proceedings in the case of a company registered under the Companies Act 1985 Pt XXII Ch II (ss 680-690) (as amended) and in the case of unregistered companies see para 1155 post. In the absence of special circumstances a stay of proceedings will be granted pending the formulation of a scheme of arrangement under s 425 (as amended): *Bowkett v Fuller's United Electric Works Ltd* [1923] 1 KB 160, CA.

⁷ *Walker v Banagher Distillery Co* (1875) 1 QBD 129; *Re People's Garden Co* (1875) 1 ChD 44; *Re Morriston Patent Fuel and Brick Co* [1877] WN 20; *Re Artistic Colour Printing Co* (1880) 14 ChD 502; *Re General Service Co-operative Stores* [1891] 1 Ch 496, CA; *Re Twentieth Century Equitable Friendly Society* [1910] WN 236; cf *Garbutt v Fawcus* (1875) 1 ChD 155, CA; *Rose v Gardden Lodge Coal Co* (1878) 3 QBD 235.

⁸ *Masbach v Anderson & Co* (1877) 37 LT 440; *Everingham v Co-operative Pure Family Beer Co* [1880] WN 99, CA.

⁹ *Re People's Garden Co* (1875) 1 ChD 44.

¹⁰ *Re Great Ship Co Ltd, Parry's Case* (1863) 4 De GJ & Sm 63; *Re Roundwood Colliery Co* [1897] 1 Ch 373; *Herbert Berry Associates Ltd v IRC* [1978] 1 All ER 161, [1977] 1 WLR 1437 (distress levied before

commencement of winding up generally allowed to proceed unless inequitable to do so); and see *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267. If there is no subsisting petition, no order for a stay may be made: *Re a Company* [1974] 1 All ER 256, [1973] 1 WLR 1566. As to costs see para 893 post.

11 *Smith, Fleming & Co's Case, Gledstones & Co's Case* (1866) 1 Ch App 538 at 545. The claimant in an claim so stayed is entitled to receive from the applicants his costs of appearing: *Pierce v Wexford Picture House Co Ltd* [1915] 2 IR 310.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/888. Execution after commencement of winding up.

888. Execution after commencement of winding up.

Where a company registered in England and Wales is being wound up by the court, any attachment, sequestration, distress or execution put in force¹ against the company's estate or effects after the commencement of the winding up is void², so that no interest in any goods of the company seized is acquired, even as against third persons³.

The statutory provision applies to distress for rent⁴ or rates⁵, to equitable execution⁶, to a third party debt order⁷, to arrest of vessels by the Admiralty Court⁸, and to an embargo on foreign assets⁹. Where, however, the successful party in a claim brought against him by the liquidator has obtained an order for payment of his costs, the court will direct payment of his costs in the same manner as if he were in a position to levy execution¹⁰. Where, before the presentation of a winding-up petition, an enforcement officer has seized in execution goods of a company, and after presentation of the petition the execution is allowed to proceed¹¹, the officer's duty to pay to the company's landlord arrears of rent not exceeding one year and the landlord's right to receive the arrears¹² are not affected by the statutory provision¹³.

The court may give leave to commence or proceed with any process falling within these provisions¹⁴.

When any such process is put in force after the winding up has commenced, a stay will be granted or leave to proceed refused¹⁵ except in very special circumstances¹⁶, as where, after the winding up, the liquidator, without taking any objection, allows the person proposing to levy execution to go on and alter his position¹⁷.

As the Crown is bound by the Insolvency Act 1986, the court can prevent the Crown from proceeding against a company in liquidation or from levying execution upon its property¹⁸.

In the case of a company being wound up by the court, where any person, whether or not a landlord or person entitled to rent, has distrained upon the goods or effects of the company in the period of three months ending with the date of the winding-up order, those goods or effects, or the proceeds of sale of those goods or effects, stand charged for the benefit of the company with the preferential debts of the company to the extent that the property of the company is for the time being insufficient for meeting them¹⁹.

1 As to when a process is put in force see the cases cited in notes 15, 17 infra. Cases decided before the enactment of the Companies Act 1929 must be read in the light of the Insolvency Act 1986 ss 183, 184 (as amended) (re-enacting, subject to qualifications, provisions contained in the Companies Act 1929), which relate to executions etc incomplete at the commencement of the winding up: see paras 882, 884 ante.

2 Insolvency Act 1986 s 128(1). Section 128 applies to a company registered in Scotland, so far as relates to any estate or effects of the company situated in England and Wales as it applies in the case of a company registered in England and Wales: s 128(2). As to the avoidance of dispositions after the commencement of winding up see para 700 ante; and as to the court's power to stay a distress or execution in a voluntary winding up see para 1014 post.

3 *Re Artistic Colour Printing Co, ex p Fourdrinier* (1882) 21 ChD 510, CA. If, however, the assets are charged to debenture holders for more than their value, so that the company has no interest in the assets, they cease to be assets of the company and a distress may prevail against the debenture holders: *Re New City Constitutional Club Co, ex p Purssell* (1887) 34 ChD 646, CA.

- 4 *Re Exhall Coal Mining Co Ltd* (1864) 4 De GJ & Sm 377; *Re Lancashire Cotton Spinning Co, ex p Carnelley* (1887) 35 ChD 656, CA (where a mortgagee distrained under an attornment clause); *Re Higginshaw Mills and Spinning Co* [1896] 2 Ch 544, CA (where a mortgagee distrained for interest under an express power in the mortgage). The provision includes sequestration in Scotland: *Re Wanzer Ltd* [1891] 1 Ch 305.
- 5 *Re Dry Docks Corp of London* (1888) 39 ChD 306, CA.
- 6 *Croshaw v Lyndhurst Ship Co* [1897] 2 Ch 154.
- 7 *Re Stanhope Silkstone Collieries* (1879) 11 ChD 160, CA.
- 8 The arrest of a ship to enforce a maritime lien is a sequestration (see *The Constellation* [1965] 3 All ER 873, [1966] 1 WLR 272); and the proper mode of enforcing it on a vessel belonging to a company is ordinarily by application in the winding up, and not by proceeding in rem in the Admiralty Court (*Re Australian Direct Steam Navigation Co* (1875) LR 20 Eq 325). Where the vessel has been mortgaged and the mortgagees are not before the winding-up court, a person having a maritime lien is permitted to proceed in rem in the Admiralty Court: *Re Rio Grande Do Sul Steamship Co* (1877) 5 ChD 282, CA. See further *Re Aro Co Ltd* [1980] Ch 196, [1981] 1 All ER 1067, CA. As to arrest in Admiralty generally see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 161 et seq.
- 9 *Flack's Case* [1894] 1 Ch 369; *Re South-Eastern of Portugal Rly Co* (1869) 17 WR 982; *Re Oriental Inland Steam Co, ex p Scinde Rly Co* (1874) 9 Ch App 557.
- 10 *Re Bank of Hindustan, China and Japan, ex p Smith* (1867) 3 Ch App 125 (where it was assumed, without deciding the point, that the execution would be void); *Re Bank of Hindustan, China and Japan, ex p Levick* (1867) LR 5 Eq 69.
- 11 See the Insolvency Act 1986 s 184 (as amended); and paras 884-885 ante.
- 12 See under the Landlord and Tenant Act 1709 s 1 (as amended): see DISTRESS vol 13 (2007 Reissue) para 1032.
- 13 *Re British Salicylates Ltd* [1919] 2 Ch 155.
- 14 See *Re Exhall Coal Mining Co Ltd* (1864) 4 De GJ & Sm 377 at 379 per Turner LJ, who held that the provision now re-enacted in the Insolvency Act 1986 s 128 (see the text and notes 1-2 supra) was to be construed as subject to the power to give leave contained in what is now s 130 (see para 893 post). In subsequent cases the correctness of Turner LJ's view has been doubted, but the court has held itself bound to adopt it on the ground that it has long been followed in practice: see *Re Lancashire Cotton Spinning Co, ex p Carnelley* (1887) 35 ChD 656, CA; *Re Wanzer Ltd* [1891] 1 Ch 305; *Re Higginshaw Mills and Spinning Co* [1896] 2 Ch 544, CA; *The Constellation* [1965] 3 All ER 873, [1966] 1 WLR 272; and see *Re Traders' North Staffordshire Carrying Co, ex p North Staffordshire Rly Co* (1874) LR 19 Eq 60; *Re Toshoku Finance UK plc (in liquidation), Kahn v IRC* [2002] UKHL 6 at [19], [39], [2002] 3 All ER 961 at [19], [39] per Lord Hoffmann. It seems that the construction set out above of the Insolvency Act 1986 s 128 has not been affected by the enactment of the provision in s 183 (as amended) (see para 882 ante): see *The Constellation* supra at 878 and at 276.
- 15 *Re London and Devon Biscuit Co* (1871) LR 12 Eq 190; *Re Dimson's Estate Fire-Clay Co* (1874) LR 19 Eq 202; *Re Universal Disinfectors Co* (1875) LR 20 Eq 162; *Re Vron Colliery Co* (1882) 20 ChD 442 at 445, CA (doubting *Re Bastow & Co* (1867) LR 4 Eq 681); *Re Taylor, Re Williams, ex p Railway Steel and Plant Co* (1878) 8 ChD 183; *Re Richards & Co* (1879) 11 ChD 676; and see *Re Imperial Steam and Household Coal Co Ltd* (1868) 37 LJ Ch 517; *Re Artistic Colour Printing Co, ex p Fourdrinier* (1882) 21 ChD 510, CA; *Corshaw v Lyndhurst Ship Co* [1897] 2 Ch 154.
- 16 *Re London Cotton Co* (1866) LR 2 Eq 53; *Armorduct Manufacturing Co Ltd v General Incandescent Co Ltd* [1911] 2 KB 143, CA; and see the cases cited in para 889 notes 3, 6, 7 post. As to the discretion of the court in a case falling under the Insolvency Act 1986 s 183 or s 184 (as amended) see the cases cited in para 882 note 7 ante.
- 17 *Rudow v Great Britain Mutual Life Insurance Society* (1881) 17 ChD 600, CA.
- 18 See para 762 ante.
- 19 See the Insolvency Act 1986 s 176(2); and para 772 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/889. Distress for rent.

889. Distress for rent.

A landlord is not allowed¹ to distrain after the commencement of the winding up² for rent accrued due before the winding up commenced in respect of which he is a creditor of the company, but must prove his debt³. Where the rent is payable at stated periods and the winding-up order is made during the currency of a period, the rent is apportionable⁴.

The landlord may, however, be permitted to distrain for rent accrued due before or during the winding up where he is not a creditor and, therefore, cannot prove for the amount of his rent, as, for example, where the company is merely an undertenant⁵, or is only equitably entitled to the lease⁶ even though it has collaterally secured the rent⁷, or where the company's goods are merely on the tenant's⁸ premises. Where the landlord is not a legal creditor of the company, he cannot be deprived of his rights of distress by an offer by the liquidator to allow him to prove for the rent⁹.

The landlord is allowed to distrain where the goods are mortgaged for more than their value, in so far as the property has ceased to be the estate or effects of the company and the liquidator has no interest¹⁰; but the landlord will be restrained where the assets are insufficient to meet the company's preferential debts¹¹. If a distress has been put in before the winding up commenced, although not completed by sale, the landlord is a secured creditor; and the distress may be allowed to proceed unless the liquidator pays the debt¹², even when the distress is in respect of rent payable in advance¹³, unless there are special reasons rendering it inequitable to permit a distress¹⁴, such as the existence of fraud or unfair dealing¹⁵.

1 See para 888 ante. For a summary of the law on distress by a landlord in which many of the cases cited below are explained see *Re Toshoku Finance UK plc (in liquidation), Kahn v IRC* [2002] UKHL 6 at [19]-[42], [2002] 3 All ER 961 at [19]-[42] per Lord Hoffmann (disapproving the summary in *Re Atlantic Computer Systems plc* [1992] Ch 505, [1992] 1 All ER 476, CA).

2 As to the commencement of the winding up see para 489 ante.

3 *Thomas v Patent Lionite Co* (1881) 17 ChD 250 at 257, CA; *Re Brown, Bayley and Dixon, ex p Roberts and Wright* (1881) 18 ChD 649; *Re Traders' North Staffordshire Carrying Co, ex p North Staffordshire Rly Co* (1874) LR 19 Eq 60; *Re Coal Consumers' Association* (1876) 4 ChD 625; *Re North Yorkshire Iron Co* (1878) 7 ChD 661; *Re ABC Coupler and Engineering Co Ltd (No 3)* [1970] 1 All ER 650 at 668, [1970] 1 WLR 702 at 721. As to proof of debt see para 749 et seq ante.

4 See para 794 ante.

5 *Re Carriage Co-operative Supply Association, ex p Clemence* (1883) 23 ChD 154.

6 *Re Exhall Coal Mining Co Ltd* (1864) 4 De GJ & Sm 377; *Re Lundy Granite Co, ex p Heaven* (1871) 6 Ch App 462; *Re Traders' North Staffordshire Carrying Co, ex p North Staffordshire Rly Co* (1874) LR 19 Eq 60 at 65; *Re Regent United Service Stores* (1878) 8 ChD 616, CA.

7 *Re Carriage Co-operative Supply Association, ex p Clemence* (1883) 23 ChD 154; cf *Re Harpur's Cycle Fittings Co* [1900] 2 Ch 731; *Re New City Constitutional Club Co, ex p Purssell* (1887) 34 ChD 646, CA.

8 *Re Traders' North Staffordshire Carrying Co, ex p North Staffordshire Rly Co* (1874) LR 19 Eq 60.

9 *Re Regent United Service Stores* (1878) 8 ChD 616, CA.

10 *Re New City Constitutional Club Co, ex p Purssell* (1887) 34 ChD 646, CA; *Re Harpur's Cycle Fittings Co* [1900] 2 Ch 731. It makes no difference that the debenture holders are willing to release their security: *Re New City Constitutional Club Co, ex p Purssell* supra.

11 *Re South Rhondda Colliery Co (1898) Ltd* [1928] WN 126. As to preferential debts see para 763 et seq ante.

12 *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA. See also *Re Bellaglade Ltd* [1977] 1 All ER 319 (the fact that a sale under a distress produced less for the creditors than a sale under a liquidation or in the course of carrying on a business was not a special circumstance justifying intervention in the proceedings); *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267. Where a landlord distrains within three months before the date of the winding-up order, the debts to which preferential payment is given are a first charge on the goods distrained on: see para 772 ante.

13 *Venner's Electrical Cooking and Heating Appliances Ltd v Thorpe* [1915] 2 Ch 404, CA. See also *Re Bellaglade Ltd* [1977] 1 All ER 319.

14 *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373 at 381 per Stirling J. The court may restrain a distress if the rent is very far in arrear, since otherwise the landlord is in the position of a secured creditor with an unregistered charge: *Re G Winterbottom (Leeds) Ltd* [1937] 2 All ER 232 (a case in voluntary winding up where distress for two years' rent was allowed, the rent being more than five years in arrear). See also *Re Bellaglade Ltd* [1977] 1 All ER 319; *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267.

15 *Venner's Cooking and Heating Appliances Ltd v Thorpe* [1915] 2 Ch 404 at 407, CA. See also *Re Bellaglade Ltd* [1977] 1 All ER 319.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/890. Retention of possession after winding up.

890. Retention of possession after winding up.

The fact that the liquidator retains possession for the purposes of the winding up will not entitle the landlord to distrain for rent accrued before the winding up commenced¹. A distress is allowed in respect of rent accrued due after winding up where the liquidator has retained possession of the property with a view to working it² or carrying on the business upon it³ or for the purpose of disposing of it advantageously⁴, but only in respect of a period after the liquidator has determined to retain possession for this purpose⁵. It is not sufficient that the liquidator has merely abstained from any effort to rid himself of the property⁶, or that the liquidator has derived some indirect advantage from the tenancy⁷. If the liquidator has kept possession by arrangement with the landlord and for his benefit as well as the company's benefit, the landlord is not allowed to distrain unless the liquidator has agreed to pay rent⁸. Where the liquidator remains in beneficial occupation, any apportionment of rent at the date of the winding-up order will be without prejudice to the landlord's claim against the liquidator⁹.

Where the liquidator remains in beneficial occupation and subsequently disclaims, the landlord is entitled to the full rent up to the date of the service of the notice to disclaim¹⁰.

1 *Re North Yorkshire Iron Co* (1878) 7 ChD 661; *Re South Kensington Co-operative Stores* (1881) 17 ChD 161; *Re Brown, Bayley and Dixon, ex p Roberts and Wright* (1881) 18 ChD 649. As to the commencement of the winding up see para 489 ante.

2 *Re Silkstone and Dodworth Coal and Iron Co* (1881) 17 ChD 158.

3 *Re South Kensington Co-operative Stores* (1881) 17 ChD 161; *Re Brown, Bayley and Dixon, ex p Roberts and Wright* (1881) 18 ChD 649.

4 *Re Lundy Granite Co, ex p Heaven* (1871) 6 Ch App 462; *Re North Yorkshire Iron Co* (1878) 7 ChD 661; *Re Downer Enterprises Ltd* [1974] 2 All ER 1074, [1974] 1 WLR 1460.

5 *Re ABC Coupler and Engineering Co Ltd (No 3)* [1970] 1 All ER 650, [1970] 1 WLR 702; *sed quaere*.

6 *Re Oak Pits Colliery Co* (1882) 21 ChD 322, CA.

7 *Re House and Land Investment Trust, ex p Smith* (1894) 42 WR 572.

8 *Re Oak Pits Colliery Co* (1882) 21 ChD 322 at 330, CA; *Re Progress Assurance Co, ex p Liverpool Exchange Co* (1870) LR 9 Eq 370; *Re Bridgewater Engineering Co* (1879) 12 ChD 181 at 187; *Re Lancashire Cotton Spinning Co, ex p Carnelley* (1887) 35 ChD 656, CA; *Re Higginshaw Mills and Spinning Co* [1896] 2 Ch 544, CA.

9 See para 794 ante.

10 *Re HH Realisations Ltd* (1975) 31 P & CR 249; see further *Re Toshoku Finance UK plc (in liquidation), Kahn v IRC* [2002] UKHL 6, [2002] 3 All ER 961, in which *Re HH Realisations Ltd* supra and many of the cases cited supra were discussed and explained.

UPDATE

438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/891. Recovery of possession.

891. Recovery of possession.

Where a right of re-entry on failure to pay rent or on winding up is reserved in the lease and the liquidator refuses to pay the rent, the landlord will be given leave to re-enter¹. In such a case, the landlord may sue for recovery of possession² or may apply to the court in the winding up for possession; and, if the claim is one against which the liquidator would have no defence, the court will order the liquidator to give up possession and will not put the applicant to the expense of bringing a claim³.

1 *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260, CA (where the landlord applied for leave to distrain, or, in the alternative, to re-enter, the landlord not being desirous of enforcing a forfeiture provided his rent was paid; an order was made for possession within one month, the order not to be enforced if, within that period, the liquidator paid the arrears of rent and costs).

2 *Re Strand Hotel Co* [1868] WN 2; and see LANDLORD AND TENANT.

3 *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260, CA; *Re New North Staffordshire Coal and Iron Co* [1884] WN 106. As to the jurisdiction of the Companies Court to grant an order for possession of premises against the liquidator of a company in the winding-up proceedings see *Re Blue Jeans Sales Ltd* [1979] 1 All ER 641, [1979] 1 WLR 362; *Re Brompton Securities Ltd* (1988) 4 BCC 189.

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438-938 Winding Up by the Court

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/892. Distress for rates.

892. Distress for rates.

A distress for rates put in before the winding up commenced is allowed to proceed unless the liquidator pays the rates¹. If the liquidator has been in beneficial occupation of premises², he must pay in full the rates becoming due in respect of those premises after the winding up commenced, or leave will be given to distrain for them³. The distress warrant cannot, however, be issued against him personally so as to make his own goods distrainable⁴.

1 *Re Dry Docks Corpn of London* (1888) 39 ChD 306, CA. Where any person distrains within three months before the date of the winding-up order, the debts to which preferential payment is given are a first charge on the goods distrained on: see para 772 ante. As to the commencement of the winding up see para 489 ante.

2 For the meaning of 'beneficial occupation' in rating cases see *Re Blazer Fire Lighter Ltd* [1895] 1 Ch 402; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) para 21 et seq.

3 *Re International Marine Hydropathic Co* (1884) 28 ChD 470, CA; *Re Wearmouth Crown Glass Co* (1882) 19 ChD 640; *Re National Arms and Ammunition Co* (1885) 28 ChD 474, CA; *Re Blazer Fire Lighter Ltd* [1895] 1 Ch 402; cf *Re British Fullers' Earth Co*, *Gibbs v British Fullers' Earth Co* (1901) 17 TLR 232; *Re Watson, Kipling & Co* (1883) 23 ChD 500 (where it was held that the liquidator's occupation was not beneficial, and an application for payment of rates in full was refused). In *Re Nolton Business Centres Ltd*, *Eliades v City of London Common Council* [1996] 1 BCLC 400, the liquidator was ordered to pay rates as an expense of the liquidation where he had retained possession of the premises for the purposes of the company. It appears from the decision of the House of Lords in *Re Toshoku Finance UK plc* [2002] UKHL 6, [2002] 3 All ER 961, [2002] 1 WLR 671, HL, that it is sufficient that the company in liquidation is in 'beneficial occupation' for the purposes of the rating legislation; and that occupation need not be retained by the company for the benefit of the estate: *Re Toshoku Finance UK plc* supra at [31]-[34] per Lord Hoffmann.

4 Cf *R v Curzon (Middlesex Justice)*, *Re Leslie* (1882) 46 LT 159; and see *Re Wearmouth Crown Glass Co* (1882) 19 ChD 640 at 642. There is a contrary decision in *Dent v Comondale Overseers* (1891) 56 JP 519, DC, where, however, it was found that the liquidator was an occupier of the premises in the ordinary sense.

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893. Proceedings against company after winding-up order.

When a winding-up order has been made or a provisional liquidator has been appointed¹, then, except by leave of the court² and subject to such terms as it may impose, no claim or proceeding³ may be proceeded with or commenced against the company⁴ or its property by a person capable of proving in the winding up⁵. Where a winding-up order has been made in the case of a company not formed under the Companies Act 1985 but registered under that Act⁶, no claim or proceeding may be commenced or proceeded with against either the company or its property or any contributory of the company in respect of any of its debts except by leave of the court⁷ and subject to such terms as it may impose⁸. The court will set aside a judgment obtained without its leave after a winding-up order has been made⁹.

The proceedings which may be restrained, or as to which leave to commence or proceed is necessary, are proceedings against the company or against the liquidator as such, including, in the case of a company not formed under the Companies Act 1985 but registered under that Act, an claim against a contributory in that capacity, to enforce a debt of the company¹⁰. Applications for rectification of the register¹¹, an interpleader summons¹², a counterclaim which is not merely a defence¹³, and magistrates' court proceedings as to rates or penalties¹⁴, are included as is distress on the company's goods¹⁵; but not a counterclaim against the company in the nature of a defence¹⁶, or an inquiry under statutory provisions as to the solvency of promoters of a company in liquidation which carried on a statutory undertaking¹⁷.

Where the court stays proceedings or refuses leave to proceed, it generally requires the liquidator to admit the creditor to prove for the amount of his claim and his costs of the claim and of the application to stay¹⁸, or the costs until he had notice of the winding up¹⁹. If a claim is brought after notice of the winding up, the creditor may be ordered to pay the costs²⁰; and, if the company, before the application to stay is made, offers to allow the creditor to prove for his debt and costs, he is not allowed his costs of appearing upon the application to stay²¹.

1 See para 491 ante.

2 See para 895 post. Leave may be given retrospectively after proceedings have been commenced: *Re Linkrealm Ltd* [1998] BCC 478.

3 As to what proceedings are included see the text and notes 4-21 infra.

4 Insolvency Act 1986 s 130(2). Section 130(2) applies to the winding up in England of a foreign company but cannot apply to a foreign insolvency proceeding: see *Mazur Media Ltd v Mazur Media GmbH* [2004] EWHC 1566 (Ch), (2004) Times, 29 July.

5 *Re Trimisaran Coal, Iron and Steel Co* (1876) 24 WR 900; *Re Lundy Granite Co, ex p Heaven* (1871) 6 Ch App 462 at 467-468; *Re Regent United Service Stores* (1878) 8 ChD 616, CA. In the case of a compulsory liquidation, the creditor is debarred from proceeding by way of making a claim unless he can show grounds for granting him leave to do so: *Currie v Consolidated Kent Collieries Corp Ltd* [1906] 1 KB 134 at 138, CA.

6 Ie under the Companies Act 1985 s 680 (as amended). See also COMPANIES vol 14 (2009) PARA 33.

7 See para 895 post.

8 Insolvency Act 1986 s 130(3). Section 130(3) does not apply in the case of a winding up in relation to a limited liability partnership: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to the position

in the case of an unregistered company see para 1155 post. The court may impose a condition that any costs ordered to be paid by the insolvent company in the litigation be added to the amount for which judgment is recovered and to the proof of debt in the liquidation: *Re Wenborn & Co* [1905] 1 Ch 413; *New Cap Reinsurance Corp Ltd v HIH Casualty & General Insurance Ltd*, *Gordian Runoff Ltd v HIH Casualty & General Insurance Ltd* [2002] EWCA Civ 300, [2002] 2 BCLC 228, CA.

9 *Hartford v Amicable Mutual Life Assurance Co* (1871) IR 5 CL 368. Proceedings commenced without the leave of the court are not a nullity and the court has power to grant leave retrospectively: *Re Linkrealm Ltd* [1998] BCC 478 (not following *Re National Employers Mutual General Insurance Association Ltd (in liquidation)* [1995] 1 BCLC 232, [1995] BCC 774).

10 *Re Onward Building Society* [1891] 2 QB 463 at 483, CA. Claims against directors are not included (*Re New Zealand Banking Corp* (1869) 39 LJ Ch 128); nor are proceedings against the company's co-defendant (*Wells v Estates Investment Co Ltd* (1867) 15 WR 762).

11 *Re Onward Building Society* [1891] 2 QB 463; but see *Hall v Old Talargoch Lead Mining Co* (1876) 3 ChD 749.

12 *Eastern Holdings Establishment of Vaduz v Singer and Friedlander Ltd* [1967] 2 All ER 1192, [1967] 1 WLR 1017.

13 *Langley Construction (Brixham) Ltd v Wells* [1969] 2 All ER 46, [1969] 1 WLR 503, CA.

14 *Re Flint, Coal and Cannel Co Ltd* (1887) 56 LJ Ch 232; *Re Briton Medical and General Life Assurance Association* (1886) 32 ChD 503. Leave is necessary where criminal proceedings are brought against a company: *R v Dickson* [1991] BCC 719, CA.

15 *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267.

16 *Mersey and Steel and Iron Co v Naylor, Benzon & Co* (1884) 9 App Cas 434, HL. Cf *Langley Constructions (Brixham) Ltd v Wells* [1969] 2 All ER 46, [1969] 1 WLR 503, CA. See also *Re J Burrows (Leeds) Ltd* [1982] 2 All ER 882, [1982] 1 WLR 1177.

17 *Re Pontypridd and Rhondda Valleys Tramways Co Ltd* (1889) 58 LJ Ch 536 (inquiry under the Tramways Act 1870 s 42).

18 *Re Poole Firebrick and Blue Clay Co* (1873) LR 17 Eq 268; *Walker v Banagher Distillery Co* (1875) 1 QBD 129.

19 *Re Life Association of England Ltd* (1864) 34 LJ Ch 64; *Re Keynsham Co* (1863) 33 Beav 123.

20 *Re East Kent Shipping Co Ltd* (1868) 18 LT 748; *Freeman v General Publishing Co* [1894] 2 QB 380.

21 *Rose v Gardden Lodge Coal Co* (1878) 3 QBD 235.

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893 Proceedings against company after winding-up order

NOTE 4--As to a claim raised in arbitration, see *Enron Metals and Commodity Ltd (in administration) v HIH Casualty and General Insurance Ltd (in provisional liquidation)* [2005] All ER (D) 178 (Mar); and PARA 895.

TEXT AND NOTES 6-8--Insolvency Act 1986 s 130(3) (see COMPANIES vol 14 (2009) PARA 48) amended: SI 2009/1941.

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894. Pending appeals.

Where at the time a winding-up order is made an appeal by the company is pending in the Court of Appeal, which proves successful, the unsuccessful party may appeal to the House of Lords without obtaining the leave of the winding-up court¹.

¹ *Humber & Co v John Griffiths Cycle Co* (1901) 85 LT 141, HL. Appeal lies to the House of Lords from an order or judgment of the Court of Appeal only with the leave of that court or of the House of Lords: see the Administration of Justice (Appeals) Act 1934 s 1(1); and CIVIL PROCEDURE vol 12 (2009) PARA 1717.

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894 Pending appeals

NOTE 1--Administration of Justice (Appeals) Act 1934 s 1 repealed: Constitutional Reform Act 2005 Sch 9 para 3, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604). As to jurisdiction see 2005 Act s 40 (in force on 1 October 2009: SI 2009/1604) and COURTS.

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895. When proceedings are allowed to continue.

The court will exercise its discretion whether or not to give leave to proceed with or commence a claim or proceeding against a company which is being wound up by the court according to what is right and fair in the circumstances¹. Proceedings will be allowed to continue where they are to enforce a mortgage or security upon the company's property unless the liquidator offers to give all that the mortgagee can obtain by his proceedings or an order in the winding up has already given him that relief². Proceedings will also be allowed to continue where the company is a necessary party to a claim against it and other persons³; or where a claim is the most convenient method of trying a question⁴; or where a shareholder has begun proceedings for rescission and rectification of the register before the winding up⁵; or where the claim is for specific performance⁶ or for recovery of possession⁷. Parties to proceedings which are continued by leave are not relieved from cross-examination in the winding up as to the matters in dispute⁸.

¹ *Re Aro Co Ltd* [1980] Ch 196, [1980] 1 All ER 1067, CA; *Re Exchange Securities & Commodities Ltd* [1983] BCLC 186; *New Cap Reinsurance Corp Ltd v HIH Casualty & General Insurance Ltd, Gordian Runoff Ltd v HIH Casualty & General Insurance Ltd* [2002] EWCA Civ 300, [2002] 2 BCLC 228, CA. The court exercises its discretion on principles analogous to those developed under the Insolvency Act 1986 s 126 (see para 887 ante); *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267. An agreement by a creditor to the discharge of a freezing order in his favour on a payment being made into a bank account in the joint names of the parties' solicitors does not confer on the creditor any security rights in relation to the sum in the account: *Flightline Ltd v Edwards* [2003] EWCA Civ 63, [2003] 3 All ER 1200.

² *Re David Lloyd & Co, Lloyd v David Lloyd & Co* (1877) 6 ChD 339, CA; *Re Longdendale Cotton Spinning Co* (1878) 8 ChD 150 at 154; *Re Hamilton's Windsor Ironworks Co Ltd, ex p General Credit and Discount Co (No 2)* (1879) 27 WR 827, CA; *Moor v Anglo-Italian Bank* (1879) 10 ChD 681; *Re Henry Pound, Son and Hutchins* (1889) 42 ChD 402, CA (debenture holders); *Re Wanzer Ltd* [1891] 1 Ch 305; *Re West Cumberland Iron and Steel Co* [1893] 1 Ch 713; *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA (debenture holders); *Strong v Carlyle Press* [1893] 1 Ch 268, CA (debenture holders); *Re National Provincial Insurance Corp Ltd* (1912) 56 Sol Jo 290; *Blakely v Dent, Re Blakely Ordnance Co Ltd* (1867) 15 WR 663 (unpaid vendor's lien); cf *Thames Plate Glass Co v Land and Sea Telegraph Co* (1870) LR 11 Eq 248; *Campbell v Compagnie Générale de Bellegarde, Re Compagnie Générale de Bellegarde* (1876) 2 ChD 181; *Guinness, Mahon & Co v Naamlooze Vennootschap Maatschappij Wokar Handel* [1946] WN 85; *Re Aro Co Ltd* [1980] Ch 196, [1980] 1 All ER 1067, CA.

³ *Re Rio Grande Do Sul Steamship Co* (1877) 5 ChD 282; *McEwan v London, Bombay and Mediterranean Bank Ltd, Re London, Bombay and Mediterranean Bank Ltd* (1866) 15 LT 495; *Hagell v Currie, Re Breech-loading Armoury Co Ltd* [1867] WN 75; *Re Marine Investment Co* (1868) 17 LT 535.

⁴ *Wyley v Exhall Coal Mining Co Ltd* (1864) 33 Beav 538 (action to restrain trespass); *Re Contract Corp, ex p Bateman* (1866) 15 WR 118 (affd without reference to this point 15 WR 245, CA); *Re Joseph Peace & Co* [1873] WN 127 (action for damages for diversion of water). Where the action proposed raises issues which may be conveniently decided in the course of the winding up, then in the absence of special circumstances leave will be refused: *Re Exchange Securities and Commodities Ltd* [1983] BCLC 186. There is no need to enter into the merits of the proposed proceedings, the question for the court being whether the dispute is appropriate for determination in the winding-up proceedings or not: *Re Bank of Credit and Commerce International SA (No 4)* [1994] 1 BCLC 419, [1995] BCC 453. Where proceedings for which no leave is necessary raise issues which also arise in litigation for which leave is necessary, the court may grant leave so as to avoid the possibility of inconsistent findings: *New Cap Reinsurance Corp Ltd v HIH Casualty & General Insurance Ltd, Gordian Runoff Ltd v HIH Casualty & General Insurance Ltd* [2002] EWCA Civ 300, [2002] 2 BCLC 228, CA.

5 *Henderson v Lacon* (1867) LR 5 Eq 249; *Hall v Old Talargoch Lead Mining Co* (1876) 3 ChD 749; *Marshall v Glamorgan Iron and Coal Co* (1868) LR 7 Eq 129 at 132; *Cocksedge v Metropolitan Coal Consumers' Association* (1891) 65 LT 432, CA.

6 *Thames Plate Glass Co v Land and Sea Telegraph Co* (1870) LR 11 Eq 248; *Re Coregrange Ltd* [1984] BCLC 453.

7 *Re Strand Hotel Co* [1868] WN 2.

8 *Re Contract Corpn, ex p Bateman* (1866) 15 WR 245, CA; *Massey v Allen* (1878) 9 ChD 164.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

895 When proceedings are allowed to continue

NOTE 1--See *Enron Metals and Commodity Ltd (in administration) v HIH Casualty and General Insurance Ltd (in provisional liquidation)* [2005] All ER (D) 178 (Mar) (claim raised in arbitration did not satisfy test under CPR Pt 24).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/896. Application for leave to commence or continue proceedings.

896. Application for leave to commence or continue proceedings.

An application to commence or proceed with claims and proceedings against a company after a winding-up order must be made to the winding-up court¹ and must be served on the liquidator². The Court of Appeal does not interfere with the discretion of the winding-up judge when he has given leave to commence or to proceed with a claim³. Leave will be given where it has been refused in the winding-up court if the Court of Appeal considers that a wrong principle has been applied⁴.

1 The Insolvency Act 1986 s 130(2), (3) refers to 'the court' which, when used in relation to a company, except in so far as the context otherwise requires, means the court having jurisdiction to wind up the company: Companies Act 1985 s 744 (applied by the Insolvency Act 1986 s 251). See further *Fabric Sales Ltd v Eratex Ltd (Practice Note)* [1984] 1 WLR 863n, CA; and para 439 ante. Applications for leave to exercise an extra-judicial remedy should be made in the winding-up court only if the leave of that court is required under the Insolvency Act 1986 s 130(2), (3): *Guinness, Mahon & Co v Naamlouze Vennootschap Maatschappij Wokar Handel* [1946] WN 85. After the winding-up order has been made, the judge dealing with the winding up may obtain control of claims by transferring them under the power of transfer given to him by the Insolvency Rules 1986, SI 1986/1925, r 7.15 (see para 898 post): cf *Wilson v Natal Investment Co* (1867) 36 LJ Ch 312.

2 *Western and Brazilian Telegraph Co v Bibby* (1880) 42 LT 821.

3 *Thames Plate Glass Co v Land and Sea Telegraph Construction Co* (1871) 6 Ch App 643.

4 *Re St Cuthbert's Lead Smelting Co* [1866] WN 84 at 90; *McEwen v London, Bombay and Mediterranean Bank Ltd, Re London, Bombay and Mediterranean Bank Ltd* (1866) 15 LT 495; *Re Strand Hotel Co* [1868] WN 2.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/897. Proceedings outside the jurisdiction.

897. Proceedings outside the jurisdiction.

The winding-up court may restrain a person within its jurisdiction from taking or continuing claims or proceedings out of the jurisdiction¹. It will also restrain a person domiciled in Scotland or Northern Ireland from taking or continuing proceedings there², unless by means of such proceedings he has, before the winding up commenced, become a secured creditor³. Where, however, a person has obtained a judgment in rem in a foreign court against the property of a company in liquidation, the liquidator cannot maintain a claim against him to recover the amount received by him under the judgment, even though he is a British subject domiciled in England⁴.

1 *Re Oriental Inland Steam Co, ex p Scinde Rly Co* (1874) 9 Ch App 557; *Re North Carolina Estate Co Ltd* (1889) 5 TLR 328; *Flack's Case* [1894] 1 Ch 369 (terms imposed upon the company); *Re Belfast Ship Owners' Co* [1894] 1 IR 321, CA; *Re Jenkins & Co Ltd* (1907) 51 Sol Jo 715; *Barclays Bank plc v Homan* [1993] BCLC 680; cf *Re Maudslay Sons and Field, Maudslay v Maudslay, Sons and Field* [1900] 1 Ch 602; and see *Mitchell v Carter, Re Buckingham International plc* [1997] 1 BCLC 673, [1997] BCC 71, CA. The Insolvency Act 1986 s 130(2), (3) (see para 893 ante) does not apply to claims or proceedings in foreign courts, although, in exercise of its equitable jurisdiction in personam, the winding-up court will restrain a respondent properly served in this country from proceeding with a claim so brought, unless it is more just to allow it to continue: *Re Vocalion (Foreign) Ltd* [1932] 2 Ch 196.

2 *Re Middlesborough Firebrick Co Ltd* (1885) 52 LT 98; *Re Hermann Loog Ltd* (1887) 36 ChD 502; *Re Queensland Mercantile Agency Co Ltd* (1888) 58 LT 878; *Re International Pulp and Paper Co* (1876) 3 ChD 594; *Re Thurso New Gas Co* (1889) 42 ChD 486. Hence, in *Martin v Port of Manchester Insurance Co* 1934 SC 143, Ct of Sess, the Scottish court sisted the action until the leave of the English court should be obtained. As to the enforcement in Scotland and Northern Ireland of orders of the winding-up court see para 1029 post.

3 *Re West Cumberland Iron and Steel Co* [1893] 1 Ch 713. As to the commencement of the winding up see para 489 ante. For the meaning of 'secured creditor' see paras 109 note 10, 797 note 1 ante.

4 *Minna Craig Steamship Co v Chartered Mercantile Bank of India, London and China* [1897] 1 QB 460, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

897 Proceedings outside the jurisdiction

NOTE 1--See *Bloom v Harms Offshore AHT 'Taurus' GmbH & Co KG* [2009] EWCA Civ 632, [2010] 2 WLR 349, [2009] 2 BCLC 473.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(i) Proceedings by or against the Company/898. Transfer to winding-up judge.

898. Transfer to winding-up judge.

Where an order for the winding up of a company has been made by the High Court, or a provisional liquidator has been appointed¹, or winding-up proceedings have been transferred to that court from a county court², a judge of any division of the High Court may, of his own motion, order the transfer to that division of any such proceedings as are mentioned below and are pending against the company concerned either in another division of the High Court or in a court in England and Wales other than the High Court³.

Proceedings which may be so transferred are those brought by or against the company for the purpose of enforcing a claim against the company's estate, or brought by a person other than the company for the purpose of enforcing any such claim, including, in either case, proceedings of any description by a debenture holder or mortgagee⁴.

1 See para 491 ante.

2 See para 899 post.

3 Insolvency Rules 1986, SI 1986/1925, r 7.15(1), (2).

4 Ibid r 7.15(3). The rule includes claims brought against the company and other persons as co-defendants: *Re Pacaya Rubber and Produce Co Ltd* [1913] 1 Ch 218, CA.

Where proceedings are transferred under the Insolvency Rules 1986, SI 1986/1925, r 7.15, the registrar may, subject to general or special directions of the judge, dispose of any matter arising in the proceedings which would, but for the transfer, have been disposed of in chambers or, in the case of proceedings transferred from a county court, by the registrar of that court: r 7.15(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(ii) Transfer of Winding-up Proceedings/899. Power to transfer winding-up proceedings.

(ii) Transfer of Winding-up Proceedings

899. Power to transfer winding-up proceedings.

The winding up of a company by the court in England and Wales, or any proceedings in it, may be transferred from one court to another in accordance with the provisions described below, or may be retained in the court in which the proceedings were commenced even though it is not the court in which they ought to have been commenced¹.

Where winding-up proceedings are pending in the High Court, the court may order them to be transferred to a specified county court²; and, where winding-up proceedings are pending in a county court, the court may order them to be transferred either to the High Court or to another county court³. In any case where proceedings are transferred to a county court, the transfer must be to a court which has jurisdiction to wind up companies⁴. Where winding-up proceedings are pending in a county court, a judge of the High Court may order them to be transferred to that court⁵.

A transfer of proceedings under these provisions may be ordered by the court of its own motion, on the application of the official receiver, or on the application of a person appearing to the court to have an interest in the proceedings⁶. An application by the official receiver for proceedings to be transferred must be made with a report by him setting out the reasons for the transfer, and including a statement either that the petitioner consents to the transfer, or that he has been given at least 14 days' notice of the official receiver's application⁷. If the court is satisfied from the official receiver's report that the proceedings can be conducted more conveniently in another court, the proceedings must be transferred to that court⁸.

Where an application for the transfer of proceedings is made otherwise than by the official receiver, at least 14 days' notice of the application must be given by the applicant to the official receiver attached to the court in which the proceedings are pending, and to the official receiver attached to the court to which it is proposed that they should be transferred⁹.

A transfer may be made where a petition has been presented, even though a winding-up order on it has not been made¹⁰, and may be ordered even after the petition has been opened¹¹. A transfer of proceedings to the High Court will be ordered where a difficult question of law is involved¹², or where the procedure in the High Court is more suitable to the conduct of the proceedings¹³. Any particular proceedings in the winding up may be transferred¹⁴.

1 Insolvency Act 1986 s 118(2). As to proceedings in the wrong court see paras 441 ante, 900 post; and as to assessment of costs following a transfer see para 1098 post.

2 Insolvency Rules 1986, SI 1986/1925, r 7.11(1). Where two different petitioners petition for winding up, one in the High Court and the other in a county court, and the county court petition is due for virtually immediate hearing, the proceedings should continue as to both petitions; the High Court must resolve the matter, being informed by affidavit of the facts relating to the county court petition: *Re Filby Bros (Provender) Ltd* [1958] 2 All ER 458, [1958] 1 WLR 683. Cf *Re Audio Systems Ltd* [1965] 2 All ER 919, [1965] 1 WLR 1096 (order made on a High Court petition that a county court petition, due to be heard much later, be transferred to the High Court and all proceedings on it be stayed).

3 Insolvency Rules 1986, SI 1986/1925, r 7.11(2).

4 Ibid r 7.11(3). See also *Re Real Estates Co* [1893] 1 Ch 398. The fact that such winding-up jurisdiction is limited, as in the case of a county court, is immaterial: *Re Vernon Heaton Co Ltd* [1936] Ch 289. As to the jurisdiction of county courts to wind up companies see para 440 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 7.11(4). See also note 2 supra.

6 Ibid r 7.11(5). A transfer of proceedings under r 7.11 may be ordered notwithstanding that the proceedings commenced before the coming into force of the Insolvency Rules 1986, SI 1986/1925 (ie 29 December 1986): rr 0.1, 7.11(6). As to the making of applications see para 1055 et seq post. The making or conduct of an application to the court by the official receiver for the transfer of winding-up proceedings from one court to another may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 20. As to the contracting out of the official receiver's functions generally see paras 505-506 ante. As to the official receiver see para 503 et seq ante.

7 Insolvency Rules 1986, SI 1986/1925, r 7.13(1).

8 Ibid r 7.13(2).

9 Ibid r 7.13(3).

10 *Re Laxon & Co* [1892] 3 Ch 31, CA.

11 *Re East Dulwich No 295 Starr-Bowkett Building Society* (1890) 39 WR 32.

12 *Re Laxon & Co* [1892] 3 Ch 31, CA.

13 *Re Vestal Hosiery Co* (1922) 91 LJ Ch 627 (misfeasance proceedings).

14 *R v East Stonehouse County Court Judge and How* (1891) 65 LT 730, CA, where it was expressly held that, under the Companies (Winding up) Act 1890 s 3 (repealed), the court had power to order the transfer of a proceeding in a voluntary winding up; s 3 (repealed), however, gave power to transfer 'the winding up of a company or any proceedings therein', whereas the Insolvency Act 1986 s 118(2) (see the text and note 1 supra) refers to the winding up of a company 'by the court' or any proceedings in the winding up.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

899 Power to transfer winding-up proceedings

TEXT AND NOTES 2-5--SI 1986/1925 r 7.11(1)-(4) amended: SI 2009/642. SI 1986/1925 r 7.11(4A) added: SI 2010/686.

TEXT AND NOTE 7--SI 1986/1925 r 7.13(1) amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(ii) Transfer of Winding-up Proceedings/900. Proceedings commenced in wrong court.

900. Proceedings commenced in wrong court.

Where winding-up proceedings are commenced in a court which is, in relation to those proceedings, the wrong court, that court may order the transfer of the proceedings to the court in which they ought to have been commenced, may order that the proceedings be continued in the court in which they have been commenced, or order the proceedings to be struck out¹.

¹ Insolvency Rules 1986, SI 1986/1925, r 7.12. As to the jurisdiction of the High Court and county courts see para 438 et seq ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

900 Proceedings commenced in wrong court

TEXT AND NOTES--SI 1986/1925 r 7.12 amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(ii) Transfer of Winding-up Proceedings/901. Proceedings following order for transfer.

901. Proceedings following order for transfer.

The court making an order for the transfer of winding-up proceedings¹ must forthwith send to the transferee court a sealed copy of the order, and the file of the proceedings². On receipt of these, the transferee court must forthwith send notice of the transfer to the official receivers attached to that court and the transferor court respectively³. Where, however, the order is made by the High Court transferring winding-up proceedings to that court from a county court⁴, the High Court must send sealed copies of the order to the county court from which the proceedings are to be transferred, and to the official receivers attached to that court and the High Court respectively; and that county court must send the file of the proceedings to the High Court⁵.

Following compliance with these provisions, if the official receiver attached to the court to which the proceedings are ordered to be transferred is not already the official receiver in relation to those proceedings⁶, he becomes, in relation to those proceedings, the official receiver in place of the official receiver attached to the other court concerned⁷.

1 Ie under the Insolvency Rules 1986, SI 1986/1925, r 7.11: see para 899 ante.

2 Ibid r 7.14(1). Where a judge in a county court refuses to deal with a transfer from the High Court, the remedy is not a retransfer but a mandatory order (formerly known as mandamus): *Re Vernon Heaton Co Ltd* [1936] Ch 289.

3 Insolvency Rules 1986, SI 1986/1925, r 7.14(2). As to the official receiver see para 503 et seq ante.

4 Ie under ibid r 7.11(4): see para 899 ante.

5 Ibid r 7.14(3).

6 Ie by virtue of directions given by the Secretary of State under the Insolvency Act 1986 s 399(6)(a): see para 503 ante. As to the Secretary of State see para 11 note 10 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 7.14(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

901 Proceedings following order for transfer

TEXT AND NOTES 6, 7--SI 1986/1925 r 7.14(4) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(iii) Stay of Winding-up Proceedings/902. Power to stay winding-up proceedings.

(iii) Stay of Winding-up Proceedings

902. Power to stay winding-up proceedings.

The court may, at any time after an order for winding up, make an order staying the proceedings, either altogether or for a limited time and on such terms and conditions as it thinks fit, on the application either of the liquidator, of the official receiver or of any creditor or contributory¹, and on proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed². On any such application the court may, before making the order, require the official receiver to furnish to the court a report with respect to any facts or matters which are, in his opinion, relevant to the application³. The validity of the winding-up order cannot be questioned on such an application⁴. The order to stay may reserve liberty to any dissentient creditor or the official receiver to apply within a limited time to remove the stay⁵. If no creditor objects, the proceedings on a compulsory order made after the commencement of a voluntary winding up may be stayed so as to allow the voluntary winding up to continue⁶. A stay is often applied for in pursuance of a scheme of arrangement sanctioned⁷ by the court⁸.

1 In the case of an application by an alleged contributory, he may be required to admit that he is a contributory before an order is made on his application: *Re Continental Bank Corpn, Re London and Mediterranean Bank* (1867) 16 LT 112; affd on appeal [1867] WN 178. A bankrupt who is discharged, but in respect of whom the bankruptcy still subsists, who is the registered holder of fully paid-up shares in a company is not a contributory for the purposes of the Insolvency Act 1986 s 147, whether he holds them as a beneficial owner or trustee; his place is taken by his trustee in bankruptcy or, if discharged, the official receiver: *Re Wolverhampton Steel and Iron Co Ltd* [1977] 3 All ER 467, [1977] 1 WLR 860, CA. As to the official receiver see para 503 et seq ante.

2 Insolvency Act 1986 s 147(1). A copy of every order made under s 147 must be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who must enter it in his records relating to the company: s 147(3). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. The order may also be made where the winding up is voluntary: see s 112; and para 1012 post. See also *Re Calgary and Edmonton Land Co Ltd* [1975] 1 All ER 1046, [1975] 1 WLR 355. An order may be made under the Insolvency Act 1986 s 147 after the return has been made to the registrar of the conclusion of a voluntary winding up, and the period of three months after the expiration of which dissolution will follow (see paras 931, 932 post) may thus in effect be extended: *Re Eastern Investment Co Ltd* [1905] 1 Ch 352. As to the effect of an order staying proceedings on the official receiver's duty to make reports, and as to the notices to creditors and contributories which may be included, see para 531 ante. As to the conditions which may be imposed under the Insolvency Act 1986 s 147 on the winding up of a building society see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2072.

3 Ibid s 147(2). It seems that such a report cannot be required in the case of a voluntary winding up: *Re Serene Shoes Ltd* [1958] 3 All ER 316, [1958] 1 WLR 1087.

4 *Re Empire Builders Ltd* (1919) 88 LJ Ch 459.

5 *Re Baxters Ltd* [1898] WN 60.

6 *Re Bristol Victoria Potteries Co* (1872) 20 WR 569. As to the commencement of a voluntary winding up see para 996 post.

7 Ie under the Companies Act 1985 s 425 (as amended).

8 *Re Stephen Walters & Sons Ltd* (1926) 70 Sol Jo 953; and see *Re Western of Canada Oil, Lands and Works Co* [1874] WN 148; *Re Lyric Syndicate Ltd* (1900) 17 TLR 162.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(iii) Stay of Winding-up Proceedings/903. Exercise of power to stay winding-up proceedings.

903. Exercise of power to stay winding-up proceedings.

In the exercise of its jurisdiction to stay¹, the court will refuse to act upon the mere assent of the creditors in the matter, and will consider whether what is proposed is for their benefit², and also whether the stay will be conducive or detrimental to commercial morality and to the interests of the public at large. In particular, the court will have regard to the facts:

- 1264 (1) that directors have not complied with their statutory duties as to giving information to the official receiver or furnishing a statement of affairs;
- 1265 (2) that there has been an undisclosed agreement between the promoter and the vendor to the company as to the participation by the promoter in fully paid shares forming the consideration for the purchase of property by the company on its formation;
- 1266 (3) that the promoter has made gifts of fully paid shares to the directors; and
- 1267 (4) that there are any other matters connected with the promotion, formation or failure of the company, or the conduct of its business or affairs, which appear to the court to require investigation³.

The same principles are apparently applicable whether the company has or has not invited the public to subscribe for its shares except, possibly, in the case of a private company⁴, where all the shareholders have full knowledge of what has been done⁵.

A stay will not normally be granted pending appeal against the making of a winding-up order against a company carrying on a profitable business as it would hamper the official receiver in his duties if the appeal were dismissed, whereas, if a stay is refused, the business can be carried on and be handed back as a going concern should the appeal be allowed⁶.

1 le under the Insolvency Act 1986 s 147: see para 902 ante.

2 The position of the liquidator and, where there is a possibility of a surplus, the interests of the members will also need to be considered: *Re Calgary and Edmonton Land Co Ltd* [1975] 1 All ER 1046, [1975] 1 WLR 355. It seems that, even where a permanent stay of a winding up is granted, a company will still be deemed to have gone into liquidation: *Re SN Group plc* [1994] 1 BCLC 319, [1993] BCC 808.

3 *Re Telescriptor Syndicate Ltd* [1903] 2 Ch 174. As to the official receiver see para 503 et seq ante.

4 For the meaning of 'private company' see COMPANIES vol 14 (2009) PARA 102.

5 *Re Telescriptor Syndicate Ltd* [1903] 2 Ch 174.

6 *Re A & BC Chewing Gum Ltd, Topps Chewing Gum Inc v Coakley* [1975] 1 All ER 1017, [1975] 1 WLR 579; cf *Re Calahurst Ltd* [1989] BCLC 140, 5 BCC 318.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(14) STAY AND TRANSFER OF PROCEEDINGS; SPECIAL CASE/(iv) Special Case from County Court/904. Case stated by county court.

(iv) Special Case from County Court

904. Case stated by county court.

If any question arises in any winding-up proceedings in a county court which all the parties to the proceedings, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge in the county court must state the facts in the form of a special case for the opinion of the High Court¹. The special case and the proceedings, or such of them as may be required, must thereupon be transmitted to the High Court for the purposes of the determination².

¹ Insolvency Act 1986 s 119(1).

² Ibid s 119(2). See also *Re Portsea Island Building Society* [1893] 3 Ch 205; *Re Ferndale Industrial Co-operative Society* [1894] 1 QB 828.

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(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS

(i) Offences by Officers

905. Offences by officers in anticipation of winding up.

When a company¹ is ordered to be wound up by the court², or passes a resolution for voluntary winding up³, any person, being a past or present officer⁴ of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up⁵, he has:

- 1268 (1) concealed any part of the company's property⁶ to the value of £500 or more, or concealed any debt due to or from the company⁷; or
- 1269 (2) fraudulently removed any part of the company's property to the value of £500 or more⁸; or
- 1270 (3) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs⁹; or
- 1271 (4) made any false entry in any book or paper affecting or relating to the company's property or affairs¹⁰; or
- 1272 (5) fraudulently parted with, altered or made any omission in, any document affecting or relating to the company's property or affairs¹¹; or
- 1273 (6) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposal was in the ordinary way of the company's business¹².

Such a person is deemed to have committed an offence if, within the period mentioned above, he has been privy to the doing by others of any of the things mentioned in heads (3) to (5) above; and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in heads (1) to (6) above, or is privy to the doing by others of any of the things mentioned in heads (3) to (5) above¹³.

Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under head (6) above, every person who takes in pawn or pledge, or otherwise receives, the property, knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence¹⁴.

A person guilty of an offence under the provisions described above is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both¹⁵.

It is, however, a defence for a person charged under head (1) or head (6) above¹⁶ to prove that he had no intent to defraud, and for a person charged under head (3) or head (4) above¹⁷ to prove that he had no intent to conceal the state of affairs of the company or to defeat the law¹⁸.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to winding up see para 432 et seq ante. For the meaning of 'court' see para 4 ante.

3 Or, in the case of a winding up in relation to a limited liability partnership, makes a determination that it be wound up voluntarily: see the Insolvency Act 1986 s 206(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to resolutions for voluntary winding up see para 939 post.

4 For these purposes, 'officer' includes a shadow director: Insolvency Act 1986 s 206(3). For the meaning of 'officer' generally see para 690 ante; and for the meaning of 'shadow director' see para 5 note 3 ante.

5 As to the commencement of the winding up see *ibid* s 129 (winding up by the court: see para 489 ante) and s 86 (voluntary winding up: see para 996 post).

6 As to the meaning of 'property' see COMPANIES vol 15 (2009) PARA 1337.

7 Insolvency Act 1986 s 206(1)(a) (amended by the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996, art 2, Schedule Pt I). The money sums specified in the Insolvency Act 1986 s 206(1)(a), (b) (as amended) (see head 2 in the text) are subject to increase or reduction by order under s 416: ss 206(7), 416(1). An order under s 416 may contain such transitional provisions as may appear to the Secretary of State necessary or expedient: s 416(2). A statutory instrument containing an order under s 416 is subject to annulment in pursuance of a resolution of either House of Parliament: s 416(4). As to the order that has been made see the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996 (as amended). As to the Secretary of State see para 11 note 10 ante.

8 Insolvency Act 1986 s 206(1)(b) (amended by the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996, art 2, Schedule Pt I). See note 7 *supra*. This includes the failure to return to the company moneys paid out by it in respect of an abortive transaction: *R v Robinson* [1990] BCC 656, CA.

9 Insolvency Act 1986 s 206(1)(c).

10 *Ibid* s 206(1)(d).

11 *Ibid* s 206(1)(e).

12 *Ibid* s 206(1)(f).

13 *Ibid* s 206(2).

14 *Ibid* s 206(5).

15 *Ibid* ss 206(6), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

16 Or under *ibid* s 206(2) (see the text and note 13 *supra*) in respect of the things mentioned in either of head (1) or head (6) in the text.

17 Or under *ibid* s 206(2) (see the text and note 13 *supra*) in respect of the things mentioned in either of head (3) or head (4) in the text.

18 *Ibid* s 206(4). However, the imposition of a legal burden on the accused under s 206(4) is incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2), and hence the Insolvency Act 1986 s 206(4) must be read in accordance with the Human Rights Act 1998 s 3: *R v Carass* [2001] EWCA Crim 2845, [2002] 1 WLR 1714, [2002] BPIR 821, CA (where the charge against the accused was laid under the Insolvency Act 1986 s 206(1)(a) (see head (1) in the text).

UPDATE

438-938 Winding Up by the Court

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906. Misconduct in the course of winding up.

When a company¹ is being wound up, whether by the court or voluntarily², any person, being a past or present officer³ of the company, commits an offence if he:

- 1274 (1) does not, to the best of his knowledge and belief, fully and truly disclose to the liquidator⁴ all the company's property⁵, and how and to whom and for what consideration and when the company disposed of any part of that property, except such part as has been disposed of in the ordinary way of the company's business⁶; or
- 1275 (2) does not deliver up to the liquidator, or as he directs, all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up⁷; or
- 1276 (3) does not deliver up to the liquidator, or as he directs, all books and papers⁸ in his custody or under his control belonging to the company and which he is required by law to deliver up⁹; or
- 1277 (4) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable¹⁰; or
- 1278 (5) after the commencement of the winding up¹¹, prevents the production of any book or paper affecting or relating to the company's property or affairs¹².

Such a person commits an offence if, after the commencement of the winding up, he attempts to account for any part of the company's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up¹³.

A person guilty of an offence under these provisions is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both¹⁴.

It is, however, a defence for a person charged under head (1), (2) or (3) above to prove that he had no intent to defraud, and for a person charged under head (5) above to prove that he had no intent to conceal the state of affairs of the company or to defeat the law¹⁵.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to winding up see paras 438 et seq ante, 996 et seq post. For the meaning of 'court' see para 4 ante.

3 For these purposes, 'officer' includes a shadow director: Insolvency Act 1986 s 208(3). For the meaning of 'officer' generally see para 690 ante; and for the meaning of 'shadow director' see para 5 note 3 ante.

4 As to the liquidator see para 950 et seq post.

5 As to the meaning of 'property' see para 489 note 8 ante.

6 Insolvency Act 1986 s 208(1)(a).

7 Ibid s 208(1)(b). The duty of the directors to co-operate is continuing and the directors owe an active duty to deliver up the company's property, books and papers without request from the liquidator: *R v McCredie* [2000] 2 BCLC 438, CA.

8 For these purposes, 'books and papers' and 'books or papers' include accounts, deeds, writings and documents: Companies Act 1985 s 744; applied by the Insolvency Act 1986 s 251.

9 Ibid s 208(1)(c). See also note 7 supra.

10 Ibid s 208(1)(d).

11 As to the commencement of the winding up see ibid s 129 (winding up by the court: see para 489 ante) and s 86 (voluntary winding up: see para 996 post).

12 Ibid 1986 s 208(1)(e).

13 Ibid s 208(2).

14 Ibid ss 208(5), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

15 Ibid s 208(4).

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438-938 Winding Up by the Court

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906 Misconduct in the course of winding up

NOTE 15--Both the legal and evidential burden of proving the defence under the 1986 Act s 208(4) lies on the person charged: *R (on the application of Griffin) v Richmond Magistrates' Court* [2008] EWHC 84 (Admin), [2008] 3 All ER 274, DC.

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907. Falsification of books.

If any officer¹ or contributory² of a company being wound up³ destroys, mutilates, alters or falsifies any books, papers⁴ or securities⁵, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he is guilty of an offence and is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁴.

1 For the meaning of 'officer' see para 690 ante.

2 For the meaning of 'contributory' see para 703 ante.

3 As to winding up see paras 438 et seq ante, 996 et seq post. For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

4 As to the meaning of 'books and papers' see para 906 note 8 ante.

5 For the meaning of 'security' see para 109 note 10 ante.

4 Insolvency Act 1986 ss 209(1), (2), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

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908. Transactions in fraud of creditors.

When a company¹ is ordered to be wound up by the court² or passes a resolution for voluntary winding up³, a person is deemed to have committed an offence if he, being at the time an officer⁴ of the company:

- 1279 (1) has made or caused to be made any gift or transfer⁵ of, or charge on, or has caused or connived at the levying of any execution against, the company's property⁶; or
- 1280 (2) has concealed or removed any part of the company's property since, or within two months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company⁷.

A person guilty of an offence under these provisions is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁸.

A person is not, however, guilty of any such offence by reason of conduct constituting an offence under head (1) above which occurred more than five years before the commencement of the winding up, or if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the creditors of the company⁹.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to winding up see para 432 et seq ante. For the meaning of 'court' see para 4 ante.

3 Or, in the case of a winding up in relation to a limited liability partnership, makes a determination that it be wound up voluntarily: see the Insolvency Act 1986 s 207(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to resolutions for voluntary winding up see para 939 post.

4 For the meaning of 'officer' see para 690 ante.

5 The cancellation of indebtedness due to the company is not a transfer of property within this provision: *R v Davies* [1955] 1 QB 71, [1954] 3 All ER 335, CCA.

6 Insolvency Act 1986 s 207(1)(a). As to the meaning of 'property' see para 489 note 8 ante.

7 Ibid s 207(1)(b).

8 Ibid ss 207(3), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

9 Ibid s 207(2).

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909. Material omissions from statement relating to company's affairs.

When a company¹ is being wound up, whether by the court or voluntarily², any person, being a past or present officer³ of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs⁴.

When a company has been ordered to be wound up by the court, or has passed a resolution for voluntary winding up⁵, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement⁶.

A person guilty of an offence under these provisions is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁷.

It is, however, a defence for a person charged under these provisions prove that he had no intent to defraud⁸.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to winding up see para 432 et seq ante. For the meaning of 'court' see para 4 ante.

3 For these purposes, 'officer' includes a shadow director: Insolvency Act 1986 s 210(3). For the meaning of 'officer' generally see para 690 ante; and for the meaning of 'shadow director' see para 5 note 3 ante.

4 Ibid s 210(1). As to the statement of affairs see para 519 et seq ante.

5 Or, in the case of a winding up in relation to a limited liability partnership, has made a determination that it be wound up voluntarily: see the Insolvency Act 1986 s 210(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to resolutions for voluntary winding up see para 939 post.

6 Insolvency Act 1986 s 210(2).

7 Ibid ss 210(5), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

8 Ibid s 210(4).

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910. False representations to creditors.

When a company¹ is being wound up, whether by the court or voluntarily³, any person, being a past or present officer³ of the company:

- 1281 (1) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up⁴; and
- 1282 (2) is deemed to have committed that offence if, prior to the winding up, he has made any false representation or committed any other fraud, for that purpose⁵.

A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁶.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to winding up see para 432 et seq ante. For the meaning of 'court' see para 4 ante.

3 For these purposes, 'officer' includes a shadow director: Insolvency Act 1986 s 211(2). For the meaning of 'officer' generally see para 690 ante; and for the meaning of 'shadow director' see para 5 note 3 ante.

4 Ibid s 211(1)(a).

5 Ibid s 211(1)(b).

6 Ibid ss 211(3), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

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(ii) Liability for Fraudulent and Wrongful Trading

911. Declaration of liability for fraudulent trading.

If, in the course of the winding up¹ of a company², it appears that any business³ of the company has been carried on with intent to defraud its creditors or creditors of any other person, or for any fraudulent purpose⁴, the court⁵, on the application of the liquidator⁶, may declare that any persons who were knowingly⁷ parties to the carrying on of the business⁸ in that manner are to be liable to make such contributions, if any, to the company's assets as the court thinks proper⁹.

1 As to winding up see para 432 et seq ante.

2 Cf the provisions dealing with criminal liability for fraudulent trading which apply whether or not the company has been, or is in the course of being wound up: see para 913 post. For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

3 As to the meaning of 'business' see para 156 note 1 ante.

4 'Defraud' and 'fraudulent purpose' connote actual dishonesty: *Re Patrick and Lyon Ltd* [1933] Ch 786. Hence, whilst the civil standard of proof on the balance of probabilities is the appropriate standard, the more inherently improbable the alleged dishonest act, the more compelling the evidence of such an act must be: *Aktieselskabet Dansk Skibsfinansiering v Brothers* [2001] 2 BCLC 324, HK CFA (decided under the analogous provisions of Hong Kong law); *Bernasconi v Nicholas Bennett & Co (a firm)* [2000] BCC 921, [2000] BPIR 8. It has been held that in order to establish dishonesty under the Insolvency Act 1986 s 213, the court must find that: (1) according to the ordinary standards of reasonable and honest people what was done was dishonest; and (2) that the actor himself must have realised that the act was by those standards dishonest: *Morphites v Bernasconi* [2001] 2 BCLC 1 (revsd without discussion of this point sub nom *Morphitis v Bernasconi* [2003] EWCA Civ 289, [2003] Ch 552). 'Intent to defraud creditors' may in general be properly inferred if the company continues to carry on business and incurs debts when to the knowledge of the persons liable there is no reasonable prospect of those debts being paid: *Re William C Leitch Bros Ltd* [1932] 2 Ch 71. One transaction may constitute fraudulent trading: *Re Gerald Cooper Chemicals Ltd* [1978] Ch 262, [1978] 2 All ER 49. Although a business may be found to have been carried on with intent to defraud creditors notwithstanding that only one creditor has been defrauded, and by a single transaction, it is not the case that whenever a fraud is perpetrated in the course of carrying on a business, it must necessarily follow that the business is being carried on with intent to defraud creditors: *Morphitis v Bernasconi* [2003] EWCA Civ 289, [2003] Ch 552. Where the only allegation is the bare fact of preferring one creditor to another, such preference per se cannot constitute fraud within the meaning of the Insolvency Act 1986 s 213: *Re Sarflax Ltd* [1979] Ch 592, [1979] 1 All ER 529. The mere fact of a preference is not fraud, since a company is entitled to discharge its liability in any order it wishes: *Morphites v Bernasconi* [2001] 2 BCLC 1; revsd without discussion of this point sub nom *Morphitis v Bernasconi* [2003] EWCA Civ 289, [2003] Ch 552. It is not necessary to prove knowledge that there was no reasonable prospect of the debts ever being paid; proof of knowledge that there was no reason for thinking that funds would become available to pay the debt when it became due or shortly thereafter may be sufficient: *R v Grantham* [1984] QB 675, [1984] 3 All ER 166, CA. See also *R v Cox*, *R v Hodges* [1983] BCLC 169, CA; *R v Lockwood* [1986] Crim LR 244, CA. An intent to defraud customers as potential creditors is sufficient even where those customers, through want of assets, have not obtained judgment or pursued other civil remedies against the company: *R v Kemp* [1988] QB 645, [1988] 2 WLR 975, CA. The word 'creditor' in its ordinary meaning denotes one to whom money is owed; and whether that debt can presently be sued for is immaterial: *R v Smith* [1996] 2 BCLC 109, CA. In order to fall within the Insolvency Act 1986 s 213, the behaviour of the respondent must be deserving of real moral blame: *Re L Todd (Swanscombe) Ltd* [1990] BCLC 454, [1990] BCC 125. A receiver carrying on the business of a company is exposed to a claim for fraudulent trading if he allows debts or liabilities to be incurred by a company under continuing contracts during the receivership for which he has no personal liability and in respect of which he knows that there is no good reason for thinking that they

can or will be paid: *Powdrill v Watson, Re Leyland DAF Ltd, Re Ferranti International plc* [1995] 2 AC 394, [1995] 2 All ER 65, HL (receivers not liable where, in pursuance of their duties to the debenture holder, they postponed the sale of properties on which unoccupied business rates continued to accrue); cf *Re Sobam BV (in receivership)* [1996] 1 BCLC 446, [1996] BCC 351.

5 For the meaning of 'court' see para 4 ante.

6 As to the making of applications see para 1055 et seq post. On the hearing of such application, the liquidator may himself give evidence or call witnesses: Insolvency Act 1986 s 215(1). It may not be appropriate for the liquidator himself or his employees to give expert evidence in such cases: *Re Continental Assurance Company of London plc* [2001] BPIR 733 at 827-829 per Park J (a wrongful trading case: see para 914 post); *Re Bank of Credit and Commerce International SA, Morris v State Bank of India* [2003] EWHC 1868 (Ch) at [20], [2003] BCC 735 at [20] per Patten J. As to the liquidator see para 950 et seq post.

7 As to what constitutes knowledge for these purposes see *Re Bank of Credit and Commerce International SA, Morris v State Bank of India* [2003] EWHC 1868 (Ch), [2003] BCC 735; *Morris v Bank of India* [2004] EWHC 528 (Ch), [2004] All ER (D) 378 (Mar) (knowledge includes actual knowledge, deliberate blindness and reckless indifference, but not the failure, however negligent, to appreciate that a fraud is being perpetrated; deliberate blindness, referred to as blind eye knowledge, requires a firmly grounded suspicion and a deliberate decision to avoid confirming the facts suspected to exist). As to when the knowledge of an employee will be attributed to the defendant company, see *Morris v Bank of India* supra. See further *Morris v Bank of America National Trust* [2000] 1 All ER 954 at 963, [2001] 1 BCLC 771 at 782-783 per Morritt LJ.

8 The mere status of being a director of a company does not ipso facto mean that that person had full knowledge of all the company's transactions; he must have knowledge of the particular transaction relied upon: *Rossleigh Ltd v Carlaw and Carlaw* (1985) 1 BCC 99, 537, Ct of Sess. The secretary, whilst merely performing the duties appropriate to that office, is not a party to the carrying on of the business: *Re Maidstone Buildings Provisions Ltd* [1971] 3 All ER 363, [1971] 1 WLR 1085. A creditor who is paid with money procured by carrying on a business with intent to defraud may be personally responsible: *Re Gerald Cooper Chemicals Ltd* [1978] Ch 262, [1978] 2 All ER 49. 'Carrying on of the business' is not necessarily synonymous with actively carrying on trade: *Re Sarflax Ltd* [1979] Ch 592, [1979] 1 All ER 529. It is necessary to show an act which could be described as carrying on the business of the company: *Re Augustus Barnett & Son Ltd* [1986] BCLC 170 (letters of comfort provided by parent did not themselves constitute the carrying on of the subsidiary's business). A person need not be performing any managerial or controlling role within the company in liquidation to be held liable under the Insolvency Act 1986 s 213: *Re Bank of Credit and Commerce International SA, Banque Arabe Internationale d'Investissement SA v Morris* [2001] 1 BCLC 263.

9 Insolvency Act 1986 s 213(1), (2). To come within the provision, mere inertia is not enough; some positive step is required: see *Re Maidstone Building Provisions Ltd* [1971] 3 All ER 363, [1971] 1 WLR 1085 (failure by financial adviser to give advice). The declaration should state a definite amount for which the person in question is liable, but this need not be limited to the amount of the debts of creditors proved to have been defrauded: *Re William C Leitch Bros Ltd* [1932] 2 Ch 71; *Re a Company (No 001418 of 1988)* [1991] BCLC 197, [1990] BCC 526. The court has no power to include a punitive element in the amount of the contribution: *Morphitis v Bernasconi* [2003] EWCA Civ 289, [2003] Ch 552; *Morris v Bank of India* [2004] EWHC 528 (Ch), [2004] All ER (D) 378 (Mar) (it seems that authority to the contrary in *Re a Company (No 001418 of 1988)* supra, and dicta of Lord Denning in *Re Cyona Distributors* [1967] 1 All ER 281 at 284, CA, under the statutory predecessors of the Insolvency Act s 213, not discussed by the Court of Appeal in *Morphitis v Bernasconi* supra, are wrong). The principle on which the power to order contribution should be exercised is that the contribution should reflect and compensate for the loss which has been caused to the creditors by the carrying on of the business in the manner which gave rise to the exercise of the power: *Morphitis v Bernasconi* supra. Sums of money recovered under the declaration are general assets available for all creditors; defrauded creditors are given no preferential rights: *Re William C Leitch Bros Ltd (No 2)* [1933] Ch 261; *Re Esal (Commodities) Ltd, London and Overseas (Sugar) Co Ltd v Punjab National Bank* [1993] BCLC 872. See also *Re Oasis Merchandising Services Ltd, Ward v Aitken* [1997] 1 BCLC 689, CA. A declaration under this provision may be made notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which it is made: Insolvency Act 1986 s 215(5). As to the directions which the court may make to give effect to the declaration see para 912 post. Any recovery under this provision has to be in favour of the liquidator and not an individual creditor or shareholder: *Re Esal (Commodities) Ltd, London and Overseas (Sugar) Co Ltd v Punjab National Bank* [1997] 1 BCLC 705, CA.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

911 Declaration of liability for fraudulent trading

TEXT AND NOTE 4--A company cannot be treated as carrying on business for the purposes of the 1986 Act s 213 after the date on which a winding-up petition has been presented against it: *Carman v The Cronos Group SA* [2005] EWHC 2403 (Ch), [2005] All ER (D) 90 (Nov).

NOTE 6--For declaration of liability for fraudulent trading cause of action arises on the day the winding-up order is made and not when either the petition is presented or the provisional liquidator is appointed: *Re Overnight Ltd, Goldfarb v Higgins* (2009) Times, 2 April.

NOTES 7, 9--*Morris*, cited, affirmed: [2005] EWCA Civ 693, [2005] 2 BCLC 328.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(ii) Liability for Fraudulent and Wrongful Trading/912. Further directions which may be made to give effect to declaration.

912. Further directions which may be made to give effect to declaration.

Where the court¹ makes a declaration of liability for fraudulent trading², wrongful trading³, or wrongful withdraw of the property of a limited liability partnership which is being wound up⁴, it may give such further directions as it thinks proper for giving effect to the declaration; and, in particular, the court may provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company⁵ to him, or on any mortgage or charge, or any interest in a mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee⁶ from or through the person liable or any person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge so imposed⁷.

Where the court makes such a declaration in relation to a person who is a creditor of the company, it may direct that the whole or any part of the debt owed by the company to that person and any interest on it is to rank in priority after all other debts owed by the company and after any interest on those debts⁸.

1 For the meaning of 'court' see para 4 ante.

le under the Insolvency Act 1986 s 213 (see para 911 ante).

3 le under ibid s 214 (see para 914 post).

4 le under ibid s 214A (as added) (see para 914 post). For the meaning of 'limited liability partnership' see para 71 note 3 ante.

5 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

6 For these purposes, 'assignee' includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made: Insolvency Act 1986 s 215(3).

7 Ibid s 215(2); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3, See para 1308 post.

8 Ibid s 215(4); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

912 Further directions which may be made to give effect to declaration

NOTE 6--In Insolvency Act 1986 s 215(3) after 'marriage' add 'or the formation of a civil partnership': Civil Partnership Act 2004 Sch 27 para 112.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(ii) Liability for Fraudulent and Wrongful Trading/913. Penalty.

913. Penalty.

Whether or not the company¹ has been, or is in the course of being, wound up², if any business³ of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose⁴, every person who was knowingly a party to the carrying on of the business in that manner is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁵.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to winding up see para 432 et seq ante.

3 As to the meaning of 'business' see para 156 note 1 ante.

4 The Companies Act 1985 s 458 creates two separate offences, namely trading with intent to defraud, and trading for any fraudulent purpose: *R v Inman* [1967] 1 QB 140, [1966] 3 All ER 414, CCA. See further para 911 ante.

5 Companies Act 1985 ss 458, 730, Sch 24. As to the statutory maximum see para 10 note 1 ante. The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he has been guilty of fraudulent trading, whether he has been convicted or not: see para 1118 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

913 Penalty

TEXT AND NOTES--1985 Act s 458, Sch 24 now the Companies Act 2006 s 993 which provides that a person is liable on conviction on indictment to imprisonment for a term not exceeding ten years.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(ii) Liability for Fraudulent and Wrongful Trading/914. Declaration of liability for wrongful trading.

914. Declaration of liability for wrongful trading.

If, in the course of the winding up¹ of a company², it appears that:

- 1283 (1) the company has gone into insolvent liquidation³;
- 1284 (2) at some time before the commencement of the winding up⁴ of the company, a person who is or has been a director⁵ of the company knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation⁶; and
- 1285 (3) that person was a director of the company at that time⁷,

the court may, on the application⁸ of the liquidator, declare that that person is to be liable to make such contribution, if any, to the company's assets as the court thinks proper⁹.

The court may not make such a declaration with respect to any person if it is satisfied that, after the condition referred to in head (2) above was first satisfied in relation to him, that person took every step with a view to minimising the potential loss to the company's creditors as, assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he ought to have taken¹⁰.

For these purposes, the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained¹¹, or reached or taken, by a reasonably diligent person having both: (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company¹²; and (b) the general knowledge, skill and experience that that director has¹³.

These provisions are without prejudice to the provisions¹⁴ relating to a declaration of liability for fraudulent trading¹⁵.

Without prejudice to these provisions, alternative provision is made in connection with limited liability partnerships which are being wound up. In such cases, where it appears that a person who is or has been a member¹⁶ of the partnership:

- 1286 (i) was a member of the partnership who, within the period of two years ending with the commencement of the winding up, withdrew partnership property¹⁷; and
- 1287 (ii) knew or had reasonable grounds for believing¹⁸ at the time of the withdrawal that the partnership was or would become unable to pay its debts¹⁹,

the court may, on the application of the liquidator, declare that that person is to be liable to make such contribution, if any, to the partnership's assets as the court thinks proper²⁰. The court may not, however, make such a declaration: (A) in relation to any person the amount of which exceeds the aggregate of the amounts or values of all the withdrawals²¹; or (B) with respect to any person unless that person knew or ought to have concluded²² that after each such withdrawal there was no reasonable prospect that the partnership would avoid going into insolvent liquidation²³.

1 As to winding up see para 432 et seq ante.

2 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

3 Ibid s 214(2)(a). For these purposes, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up: s 214(6).

4 Other than in the case of a winding up in relation to a limited liability partnership (see the text and notes 16-23 infra), the court may not make a declaration under ibid s 214 in any case where the time referred to in head (2) in the text was before 28 April 1986: s 214(2); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3. See para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to the commencement of the winding up see s 129 (winding up by the court: see para 489 ante) and s 86 (voluntary winding up: see para 996 post).

5 For these purposes, 'director' includes a shadow director: Insolvency Act 1986 s 214(7). For the meaning of 'director' generally see para 5 note 2 ante; and for the meaning of 'shadow director' see para 5 note 3 ante. In *Re a Company (No 005009 of 1987)*, ex p Copp [1989] BCLC 13, 4 BCC 424, the court refused to strike out a claim that a bank was a shadow director, where the bank had commissioned a financial report on the company containing recommendations which the de jure directors then implemented. The claim was abandoned during the trial of the action: *Re MC Bacon Ltd* [1990] BCLC 324, [1990] BCC 78. The directors of a parent company are not, without more, shadow directors of a subsidiary: *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180, sub nom *Re Hydrodan (Corby) Ltd* [1994] BCC 161 (where the court accepted the concession of counsel that the Insolvency Act 1986 s 214 applied to de facto directors). De facto directors, who act as directors, and are held out to be directors, but are not validly appointed, and shadow directors, who are not held out as directors but operate behind the scenes, are normally mutually exclusive categories and to plead that the same person has acted as both a de facto and a shadow director will normally be embarrassing: *Re Hydrodam (Corby) Ltd* supra. A claim under the Insolvency Act 1986 s 214 may be brought against the personal representatives of a deceased director: *Re Sherbourne Associates Ltd* [1995] BCC 40.

6 Insolvency Act 1986 s 214(2)(b). If a liquidator fails to establish the material facts as to the dates pleaded as the dates at which the directors knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he will not be allowed to contend that the directors knew or ought to have concluded such matters at any subsequent date: *Re Sherbourne Associates Ltd* [1995] BCC 40; and see also *Re Brian D Pierson (Contractors) Ltd* [2001] 1 BCLC 275 at 303, [1999] BCC 26 at 49-50 per Hazel Williamson QC; *Re Continental Assurance Company of London plc* [2001] BPIR 733 at 899 per Park J. As to the liquidator see para 950 et seq post.

7 Insolvency Act 1986 s 214(2)(c).

8 As to the making of applications see para 1055 et seq post. On the hearing of such an application the liquidator may himself give evidence or call witnesses: ibid s 215(1). It may not be appropriate for the liquidator himself or his employees to give expert evidence in such cases: *Re Continental Assurance Company of London plc* [2001] BPIR 733 at 827-829 per Park J; *Re Bank of Credit and Commerce International SA, Morris v State Bank of India* [2003] EWHC 1868 (Ch), [2003] BCC 735 (a fraudulent trading case: see para 911 ante).

9 Insolvency Act 1986 s 214(1), (2). The purpose of an order is to compensate all the creditors and there is no jurisdiction to order payment to a certain class of creditors alone: *Re Purpoint Ltd* [1991] BCLC 491, [1991] BCC 121. Normally a comparison will be made between the net deficiency of the company's assets at the date at which it is contended that trading should have ceased as compared to the net deficiency of assets in the actual liquidation: *Re Continental Assurance Co of London plc* [2001] BPIR 733; *Re Marini Ltd* [2003] EWHC 334 (Ch), [2004] BCC 172 (where it was held that the existence of such an increase in the net deficiency is a precondition to the exercise of the court's powers under the Insolvency Act 1986 s 214). In *Re DKG Contractors Ltd* [1990] BCC 903, the court ordered that payments under the Insolvency Act 1986 s 212 and s 239 should go to satisfy the liability under s 214 and the cumulative liability was not to exceed the amount needed to pay all creditors and the costs of the liquidation; cf *Re Purpoint Ltd* supra (where cumulative orders were made). The proceeds of a successful claim under the Insolvency Act 1986 s 214 enure for the benefit of the unsecured creditors and do not fall within a charge: *Re Oasis Merchandising Services Ltd, Ward v Aitken* [1997] 1 BCLC 689, CA; cf *Re Produce Marketing Consortium Ltd (No 2)* [1989] BCLC 520 at 554, 5 BCC 569 at 598 per Knox J (where the point was not argued). Since neither the cause of action nor the fruits of the cause of action are property of the company, the liquidator has no power to sell the cause of action or the right to the fruits of that action: *Re Oasis Merchandising Services Ltd, Ward v Aitken* supra. Interest may be awarded from the date of the commencement of the winding up: *Re Produce Marketing Consortium Ltd (No 2)* supra. No defence may be claimed by a director under the Companies Act 1985 s 727: *Re Produce Marketing Consortium Ltd* [1989] BCLC 513, 5 BCC 399; *Re Brian D Pierson (Contractors) Ltd* [2001] 1 BCLC 275 at 309, [1999] BCC 26 at 55 per Hazel

Williamson QC. A declaration under this provision may be made notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which it is made: Insolvency Act 1986 s 215(5). Where proceedings are issued against several directors, the liability of those directors is prima facie several and not joint, though the court has a discretion as to whether to impose joint, or joint and several, liability: *Re Continental Assurance Co of London plc* supra at 846-848 per Park J. It seems that in assessing the contribution to be ordered, the court will seek to establish to what extent the actions of the directors by reason of which they have been held liable have caused any losses suffered by the company: *Re Continental Assurance Co of London plc* supra at 844-848 per Park J. As to the directions which the court may make to give effect to the declaration see para 915 post.

10 Insolvency Act 1986 s 214(3).

11 The reference to 'ascertained' means that a director will be deemed to know the information in the annual accounts at the date when they ought to have been filed, not the date when they were in fact audited: *Re Produce Marketing Consortium Ltd (No 2)* [1989] BCLC 520, 5 BCC 569.

12 For these purposes, the reference to the functions carried out in relation to a company by a director of the company includes a reference to any functions which he does not carry out but which have been entrusted to him: Insolvency Act 1986 s 214(5).

13 Ibid s 214(4). In assessing what a director knew or ought to have concluded, the court will take into account what might reasonably be expected of a person fulfilling his functions and showing reasonable diligence in doing so, and have regard to the particular director in question, his functions and the particular company and its business: *Re Produce Marketing Consortium Ltd (No 2)* [1989] BCLC 520, 5 BCC 569. In *Re D'Jan of London Ltd, Copp v D'Jan* [1994] 1 BCLC 561, [1993] BCC 646, Hoffmann LJ considered that the duty as stated in the Insolvency Act 1986 s 214 stated accurately the duty of directors at common law. See also *Daniels (formerly practising as Deloitte Haskins & Sells) v Anderson* (1995) 118 FLR 248, 1995 13 ACLC 614, NSW SC.

14 Ie the Insolvency Act 1986 s 213: see para 911 ante.

15 Ibid s 214(8). The Limitation Act 1980 s 9(1) applies to a claim for wrongful trading, so that the liquidator has six years from the date at which the company entered insolvent liquidation within which to bring the claim: *Re Farmizer (Products) Ltd, Moore v Gadd* [1997] 1 BCLC 589, [1997] BCC 655, CA.

16 For these purposes, 'member' includes a shadow member: Insolvency Act 1986 s 214A(8) (s 214A added by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3). For the meaning of 'shadow member' see para 5 note 4 ante.

17 Insolvency Act 1986 214A(1), (2)(a) (as added: see note 16 supra). This is a reference to all partnership property whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the partnership or any other withdrawal of property: s 214A(2)(a) (as so added).

18 These matters must be proved by the liquidator to the satisfaction of the court: *ibid* s 214A(2)(b) (as added: see note 16 supra).

19 Ibid s 214A(2)(b) (as added: see note 16 supra). The reference in the text to a person knowing or having reasonable grounds for believing that at the time of withdrawal the partnership was or would become unable to pay its debts is a reference to that person knowing or having reasonable grounds for believing that the partnership either was at the time of the withdrawal unable to pay its debts within the meaning of s 123 (see para 446 ante) (s 214A(2)(b)(i) (as so added)) or would become so after its assets had been depleted by that withdrawal taken together with all other withdrawals, if any, made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made (s 214A(2)(b)(ii) (as so added)).

20 Ibid s 214A(3), (9) (as added: see note 16 supra). On the hearing of such an application, the liquidator may himself give evidence or call witnesses: s 215(1); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

21 Insolvency Act 1986 s 214A(4) (as added: see note 16 supra). The reference in the text to the withdrawals is a reference to the withdrawals referred to in s 214A(2) (as added) (see the text and notes 16-18 supra) and made by the person in question within the two years referred to therein: s 214A(4) (as so added).

22 For these purposes, the facts which a member ought to know or ascertain and the conclusions which he ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that member in relation to the partnership and the general knowledge, skill and experience that that member has: *ibid* s 214A(6) (as added: see note 16 supra).

23 Ibid s 214A(5) (as added: see note 16 supra). For these purposes, a limited liability partnership goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up: s 214A(7) (as so added).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(ii) Liability for Fraudulent and Wrongful Trading/915. Further directions which may be made to give effect to the declaration.

915. Further directions which may be made to give effect to the declaration.

Where the court¹ makes a declaration of liability for wrongful trading², it has the same powers to give further directions for giving effect to the declaration as it has in relation to a declaration of liability for fraudulent trading³.

1 For the meaning of 'court' see para 4 ante.

2 See para 914 ante.

3 See the Insolvency Act 1986 s 215(2)-(4), which applies, mutatis mutandis, to a declaration of liability for wrongful trading and for the wrongful withdrawal of the property of a limited liability partnership which is being wound up. See also para 912 ante. As to the court's power to make a disqualification order against a person who has contravened the wrongful trading provisions see para 1118 post. In *Re Purpoint Ltd* [1991] BCLC 491, [1991] BCC 121, an order was made subordinating the payment of any debts owed by the company to the director until after payment of all other creditors of the company.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/916. Restriction on re-use of company names; meaning of 'prohibited name'.

(iii) Restriction on Re-use of Company Names

916. Restriction on re-use of company names; meaning of 'prohibited name'.

Where a company¹ ('the liquidating company') has gone into insolvent liquidation² on or after 29 December 1986, a person who was a director³ or shadow director⁴ of the company at any time in the period of 12 months ending with the day before it went into liquidation⁵ may not, at any time in the period of five years beginning with the day on which the liquidating company went into liquidation:

- 1288 (1) be a director of any other company that is known by a prohibited name⁶; or
- 1289 (2) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company⁷; or
- 1290 (3) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business⁸ carried on, otherwise than by a company, under a prohibited name⁹,

except with the leave of the court¹⁰ or in the prescribed excepted cases¹¹.

For these purposes, a name is a prohibited name in relation to a such person if it is:

- 1291 (a) a name by which the liquidating company was known at any time in the period of 12 months ending with the day before it went into liquidation; or
- 1292 (b) a name which is so similar to a name falling within head (a) above as to suggest an association with that company¹²,

and references, in relation to any time, to a name by which a company is known are references to the name of the company at that time or to any name under which the company carries on business at that time¹³.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24. For these purposes, 'company' includes a company which may be wound up under the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (see para 1147 et seq post): s 216(8).

2 For these purposes, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up: *ibid* s 216(7). For the meaning of 'go into liquidation' see para 9 note 3 ante.

3 As to the meaning of 'director' see para 5 note 2 ante.

4 For the meaning of 'shadow director' see para 5 note 3 ante.

5 Insolvency Act 1986 s 216(1).

6 *Ibid* s 216(3)(a).

7 *Ibid* s 216(3)(b).

8 As to the meaning of 'business' see para 156 note 1 ante.

9 Insolvency Act 1986 s 216(3)(c).

10 For these purposes, 'the court' means any court having jurisdiction to wind up companies: *ibid* s 216(5). As to application for leave see further para 917 post. For the meaning of 'court' generally see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq ante. As to the making of applications see para 1055 et seq post. It is wrong in principle to treat an applicant under s 216 as if he were a director applying for leave to act as a director under the Company Directors Disqualification Act 1986 s 17 (see para 1301 post); and the fact that an applicant intends to trade under a prohibited name does not, without more, entitle the court to impose restrictions on any grant of leave as would be appropriate under s 17: *Penrose v Official Receiver* [1996] 2 All ER 96, [1996] 1 BCLC 389; cf *Re Bonus Breaks Ltd* [1991] BCC 546 (where leave was granted on undertakings which were offered by the applicant); *Re Lightning Electrical Contractors Ltd* [1996] 2 BCLC 302, [1996] BCC 950 (where leave was granted in respect of dormant companies).

11 Insolvency Act 1986 s 216(3). As to the excepted cases see paras 918-920 post. As to the penalties and other consequences of contravening these provisions see paras 921-922 post.

12 *Ibid* s 216(2); and see *Archer Structures Ltd v Griffiths* [2003] EWHC 957 (Ch), [2004] 1 BCLC 201, [2003] BPIR 1071. In *Ad Valorem Factors Ltd v Ricketts* [2003] EWCA Civ 1706 at [30], [2004] 1 All ER 894 at [30], [2004] 1 BCLC 1 at [30], Simon Brown LJ stated that the similarity between the two names must be such as to give rise to a probability that members of the public, comparing the names in the relevant context, will associate the two companies with each other, whether as successor companies or as part of the same group. Although the Insolvency Act 1986 s 216 was enacted so as to curb the 'phoenix syndrome' involving the exploitation of the privileges of limited liability through the transfer of assets between successive undercapitalised companies, the scope of the provision is wider, and there is no precondition to the application of the provision that the case arose out of such circumstances, nor need anyone have been misled by the relevant names: *Ad Valorem Factors Ltd v Ricketts* *supra* at [15]-[18] per Mummery LJ.

13 Insolvency Act 1986 s 216(6).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

916 Restriction on re-use of company names; meaning of 'prohibited name'

NOTE 12--*Ad Valorem Factors Ltd*, applied in *Revenue and Customs Comrs v Walsh* [2005] EWHC 1304 (Ch), [2005] 2 BCLC 455; *Revenue and Customs Comrs v Benton-Diggins* [2006] EWHC 793 (Ch), [2006] 2 BCLC 255. See also *First Independent Factors and Finance Ltd v Mountford* [2008] EWHC 835 (Ch), [2008] BPIR 515, [2008] All ER (D) 330 (Apr).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/917. Application for leave.

917. Application for leave.

On an application for leave¹, the Secretary of State² or the official receiver³ may appear and call the attention of the court⁴ to any matters which seem to him to be relevant⁵. When considering an application for leave, the court may call on the liquidator⁶, or any former liquidator of the liquidating company⁷ for a report of the circumstances in which that company became insolvent, and the extent, if any, of the applicant's apparent responsibility for its doing so⁸.

1 le under the Insolvency Act 1986 s 216: see para 916 ante.

2 As to the Secretary of State see para 11 note 10 ante.

3 As to the official receiver see para 503 et seq ante.

4 For the meaning of 'court' see para 4 ante.

5 Insolvency Act 1986 s 216(5).

6 As to the liquidator see para 950 et seq post.

7 For the meaning of 'the liquidating company' see para 916 ante.

8 Insolvency Rules 1986, SI 1986/1925, rr 4.226(a), 4.227 (r 4.226(a) amended by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

917 Application for leave

TEXT AND NOTES--SI 1986/1925 r 4.227 substituted by r 4.227A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/918. First excepted case.

918. First excepted case.

Where a company¹ ('the successor company') acquires the whole, or substantially the whole, of the business² of an insolvent company, under arrangements made by an insolvency practitioner acting as the insolvent company's liquidator³, administrator⁴ or administrative receiver⁵, or as supervisor of a voluntary arrangement⁶, the successor company may give notice to the insolvent company's creditors⁷.

To be effective, the notice must be given within 28 days from the completion of the arrangements to all creditors of the insolvent company of whose addresses the successor company is aware in that period; and it must specify:

- 1293 (1) the name and registered number of the insolvent company and the circumstances in which its business has been acquired by the successor company⁸;
- 1294 (2) the name which the successor company has assumed, or proposes to assume for the purpose of carrying on the business, if that name is or will be a prohibited name⁹; and
- 1295 (3) any change of name which it has made, or proposes to make¹⁰, for that purpose¹¹.

The notice may name a person to whom the provisions restricting the re-use of company names¹² may apply as having been a director¹³ or shadow director¹⁴ of the insolvent company, and give particulars as to the nature and duration of that directorship, with a view to his being a director of the successor company or being otherwise associated with its management¹⁵.

If the successor company has effectively given notice under these provisions to the insolvent company's creditors, a person who is so named in the notice may act in relation to the successor company in any of the ways otherwise prohibited¹⁶, notwithstanding that he has not obtained the leave of the court¹⁷.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

2 As to the meaning of 'business' see para 156 note 1 ante.

3 As to the liquidator see para 950 et seq post.

4 As to the administrator see para 158 et seq ante.

5 As to the administrative receiver see para 380 et seq ante.

6 ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

7 Insolvency Rules 1986, SI 1986/1925, rr 4.226(b), 4.228(1). Rule 4.228 identifies and meets two elements of mischief: (1) the danger that the business of the old insolvent company has been acquired at an undervalue, or is otherwise to be expropriated, to the detriment of its creditors; (2) the danger that the creditors of the old company may be misled into the belief that there has been no change in corporate vehicle: *Penrose v Official Receiver* [1996] 2 All ER 96 at 104, [1996] 1 BCLC 389 at 397-398 per Chadwick J.

8 Insolvency Rules 1986, SI 1986/1925, r 4.228(2)(a).

- 9 Ibid r 4.228(2)(b). For the meaning of 'prohibited name' see para 916 ante.
- 10 le under the Companies Act 1985 s 28. See also COMPANIES vol 14 (2009) PARA 217 et seq.
- 11 Insolvency Rules 1986, SI 1986/1925, r 4.228(2)(c).
- 12 le the Insolvency Act 1986 s 216: see para 916 ante.
- 13 As to the meaning of 'director' see para 5 note 2 ante.
- 14 For the meaning of 'shadow director' see para 5 note 3 ante.
- 15 Insolvency Rules 1986, SI 1986/1925, r 4.228(3).
- 16 le in any of the ways mentioned in the Insolvency Act 1986 s 216(3): see para 916 ante.
- 17 Insolvency Rules 1986, SI 1986/1925, r 4.228(4). For the meaning of 'court' see para 4 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

918 First excepted case

TEXT AND NOTES--SI 1986/1925 r 4.228 substituted, Sch 4 Form 4.73 added: SI 2007/1974.

NOTE 15--A notice under SI 1986/1925 r 4.228 cannot be given in respect of a person who is a director of the successor company when the notice is given: *First Independent Factors and Finance Ltd v Churchill* [2006] EWCA Civ 1623, [2007] Bus LR 676.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/919. Second excepted case.

919. Second excepted case.

Where a person to whom the provisions restricting the re-use of company names¹ apply as having been a director² or shadow director³ of the liquidating company⁴ applies for leave of the court⁵ not later than seven days from the date on which the company⁶ went into liquidation⁷, he may act in any of the ways otherwise prohibited⁸, notwithstanding that he does not have the leave of the court, during the period beginning with the day on which the company goes into liquidation and ending on the day falling six weeks after that date or on the day on which the court disposes of the application for leave, whichever of those days occurs first⁹.

1 Ie the Insolvency Act 1986 s 216: see para 916 ante.

2 As to the meaning of 'director' see para 5 note 2 ante.

3 For the meaning of 'shadow director' see para 5 note 3 ante.

4 For the meaning of 'the liquidating company' see para 916 ante.

5 Ie under the Insolvency Act 1986 s 216. For the meaning of 'court' see para 4 ante.

6 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

7 For the meaning of 'go into liquidation' see para 9 note 3 ante.

8 Ie any of the ways mentioned in the Insolvency Act 1986 s 216(3): see para 916 ante.

9 Insolvency Rules 1986, SI 1986/1925, rr 4.226(b), 4.229(1), (2) (r 4.229 substituted by SI 1987/1919).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/920. Third excepted case.

920. Third excepted case.

The court's¹ leave² is not required where the company³, though known by a prohibited name⁴, has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company⁵ went into liquidation⁶, and has not at any time in those 12 months been⁷ dormant⁸.

1 For the meaning of 'court' see para 4 ante.

2 Ie under the Insolvency Act 1986 s 216(3): see para 916 ante.

3 Ie the company referred to in ibid s 216(3), being any company other than the liquidating company: see para 916 ante. For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

4 For the meaning of 'prohibited name' see para 916 ante.

5 For the meaning of 'the liquidating company' see para 916 ante.

6 For the meaning of 'go into liquidation' see para 9 note 3 ante.

7 Ie within the meaning of the Companies Act 1985 s 249AA (as added). See further COMPANIES vol 15 (2009) PARA 910.

8 Insolvency Rules 1986, SI 1986/1925, rr 4.226(b), 4.230; Interpretation Act 1978 s 17(2)(a). The mischief at which the Insolvency Act 1986 s 216 is aimed does not exist when the company having a prohibited name is not a 'phoenix': *Penrose v Official Receiver* [1996] 2 All ER 96 at 104, [1996] 1 BCLC 389 at 398 per Chadwick J.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

920 Third excepted case

NOTE 5--Not permissible to take account of personal business using the same trade name active in the 12 month period: *First Independent Factors and Finance Ltd v Mountford* [2008] EWHC 835 (Ch), [2008] BPIR 515, [2008] All ER (D) 330 (Apr).

NOTE 8--SI 1986/1925 r 4.230 amended: SI 2009/2472. 'Known by' under SI 1986/1925 r 4.230 must have the same meaning as under the Insolvency Act 1986 s 216(6) (see PARA 916): *ESS Production Ltd (in administration) v Sully* [2005] EWCA Civ 554, [2005] 2 BCLC 547.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/921. Penalty.

921. Penalty.

If a person acts in contravention of the provisions restricting the re-use of company names¹, he is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both².

¹ I.e. the Insolvency Act 1986 s 216: see paras 916-920 ante.

² Ibid ss 216(4), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante. The offence is one of strict liability: *R v Cole* [1998] 2 BCLC 234, [1998] BCC 87, CA; *R v Doring* [2002] EWCA Crim 1695, [2003] 1 Cr App Rep 143.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(iii) Restriction on Re-use of Company Names/922. Personal liability for debts, following contravention.

922. Personal liability for debts, following contravention.

A person is personally responsible for all the relevant debts¹ of a company² if at any time:

- 1296 (1) in contravention of the provisions restricting the re-use of company names³, he is involved in the management of the company⁴; or
- 1297 (2) as a person who is involved in the management of the company⁵, he acts or is willing to act on instructions given, without the leave of the court⁶, by a person whom he knows at that time to be in contravention in relation to the company of the provisions restricting the re-use of company names⁷.

A person who is so personally responsible is jointly and severally liable in respect of those debts with the company and any other person who, whether under these provisions⁸ or otherwise, is so liable⁹.

1 For these purposes, the relevant debts of a company are: (1) in relation to a person who is personally responsible under the Insolvency Act 1986 s 217(1)(a) (see head (1) in the text), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and (2) in relation to a person who is personally responsible under s 217(1)(b) (see head (2) in the text), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in s 217(1)(b): s 217(3).

2 For these purposes, 'company' includes a company which may be wound up under *ibid* Pt V (ss 220-229) (as amended) (see para 1147 *et seq post*): s 217(6). For the meaning of 'company' generally see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

3 *Ie* *ibid* s 216: see paras 916-920 *ante*.

4 *Ibid* s 217(1)(a).

5 For these purposes, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company: *ibid* s 217(4). As to the meaning of 'director' see para 5 note 2 *ante*.

6 For the meaning of 'court' see para 4 *ante*.

7 Insolvency Act 1986 s 217(1)(b). The provisions referred to in the text are those of s 216 (see paras 916-920 *ante*). For these purposes, a person who, as a person involved in the management of a company, has at any time acted on instructions given, without the leave of the court, by a person whom he knew at that time to be in contravention in relation to the company of s 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person: s 217(5).

8 *Ie* under *ibid* s 217.

9 *Ibid* s 217(2). A person so liable is not entitled to the benefit of any set-off as between the company and the creditor under the Insolvency Rules 1986, SI 1986/1925, r 4.90 (see para 792 *ante*): *Archer Structures Ltd v Griffiths* [2003] EWHC 957 (Ch), [2004] 1 BCLC 201, [2003] BPIR 1071.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

922 Personal liability for debts, following contravention

NOTE 1--See *Glasgow City Council v Craig* [2008] CSOH 171, [2009] 1 BCLC 742.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/ (iv) Disqualification of Directors/923. Disqualification of directors.

(iv) Disqualification of Directors

923. Disqualification of directors.

The liquidator¹ is under a duty to provide information to the Secretary of State² or the official receiver³ at his request in connection with the exercise of his functions under the Company Directors Disqualification Act 1986⁴. The liquidator is given power to apply for disqualification orders on certain grounds⁵.

1 As to the liquidator see para 950 et seq post.

2 As to the Secretary of State see para 11 note 10 ante.

3 As to the official receiver see para 503 et seq ante.

4 See para 1127 et seq post.

5 See para 1130 et seq post. As to disqualification orders generally see para 1107 et seq post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate/924. Reference to the Secretary of State.

(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate

924. Reference to the Secretary of State.

If it appears to the court¹, in the course of a winding up by the court², that any past or present officer³, or any member⁴, of the company⁵ has been guilty of any offence in relation to the company, for which he is criminally liable, the court may, either on the application of a person interested in the winding up or of its own motion, direct the liquidator⁶ to refer the matter to the Secretary of State⁷.

1 For the meaning of 'court' see para 4 ante.

2 As to prosecution in the case of a voluntary winding up see para 1015 et seq post. As to winding up see para 432 et seq ante.

3 For the meaning of 'officer' see para 690 ante.

4 As to the meaning of 'member' see para 72 note 9 ante.

5 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

6 As to the liquidator see para 950 et seq post.

7 Insolvency Act 1986 s 218(1) (amended by the Insolvency Act 2000 s 10(1), (2)). As to the principles under previous Acts to which a court had regard in deciding whether or not to direct a prosecution see *Re London and Globe Finance Corpn* [1903] 1 Ch 728; *Re Charles Denham & Co* (1884) 53 LJ Ch 1113; *Re Eupion Fuel and Gas Co* [1875] WN 10; *Re Northern Counties Bank Ltd* (1883) 31 WR 546. As to the Secretary of State see para 11 note 10 ante.

In the case of a winding up in relation to a limited liability partnership, these provisions apply to the partnership's members: see the Insolvency Act 1986 s 218(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

924-928 Prosecutions and Summary Proceedings; Offences by Bodies Corporate

As to legal professional privilege in relation to offences under the Insolvency Act 1986, see ss 434A, 434C; and PARA 928A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate/925. Duty of liquidator to report to the official receiver.

925. Duty of liquidator to report to the official receiver.

If, in the case of a winding up¹ by the court², it appears to the liquidator³, not being the official receiver⁴, that any past or present officer⁵ of the company⁶, or any member⁷ of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator must report the matter to the official receiver⁸.

1 As to winding up see para 432 et seq ante.

2 For the meaning of 'court' see para 4 ante.

3 As to the liquidator see para 950 et seq post.

4 As to the official receiver see para 503 et seq ante.

5 For the meaning of 'officer' see para 690 ante.

6 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

7 As to the meaning of 'member' see para 72 note 9 ante.

8 Insolvency Act 1986 s 218(3). In the case of a winding up in relation to a limited liability partnership, these provisions apply to the partnership's officers or members: see s 218(3); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

924-928 Prosecutions and Summary Proceedings; Offences by Bodies Corporate

As to legal professional privilege in relation to offences under the Insolvency Act 1986, see ss 434A, 434C; and PARA 928A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate/926. Institution of prosecution and duty to assist.

926. Institution of prosecution and duty to assist.

Where criminal proceedings are instituted by the Director of Public Prosecutions¹ or the Secretary of State² following any report or reference³, it is the duty of the liquidator⁴ and of every officer⁵ and agent⁶ of the company⁷ past and present, other than the defendant in the proceedings, to give to the Director of Public Prosecutions or the Secretary of State, as the case may be, all assistance in connection with the prosecution which he is reasonably able to give⁸.

If a person fails or neglects to give such assistance, the court⁹ may, on the application of the Director of Public Prosecutions or the Secretary of State, as the case may be, direct that person to comply with the above requirements; and if the application is made with respect to a liquidator, the court may, unless it appears that the failure or neglect to comply was due to his not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally¹⁰.

1 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq.

2 As to the Secretary of State see para 11 note 10 ante.

3 Ie under the Insolvency Act 1986 s 218 (as amended): see paras 924-925 ante.

4 As to the liquidator see para 950 et seq post.

5 For the meaning of 'officer' see para 690 ante.

6 For these purposes, 'agent' includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company: Insolvency Act 1986 s 219(3). The reference to a solicitor includes a reference to a body corporate recognised by the Council of the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 3, 4(a), Sch 1.

7 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

8 Ibid s 219(3) (amended by the Insolvency Act 2000 s 10(1), (7)(b)).

9 For the meaning of 'court' see para 4 ante.

10 Insolvency Act s 219(4) (amended by the Insolvency Act 2000 s 10(1), (7)(c)). Failure to comply with the order of the court is punishable as a contempt of court. As to civil contempt of court see CONTEMPT OF COURT vol 9(1) (Reissue) para 458 et seq.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

924-928 Prosecutions and Summary Proceedings; Offences by Bodies Corporate

As to legal professional privilege in relation to offences under the Insolvency Act 1986, see ss 434A, 434C; and PARA 928A.

926 Institution of prosecution and duty to assist

NOTE 6--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. SI 1991/2684 art 3 amended: SI 2009/500. See also SI 1991/2684 art 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate/927. Summary proceedings.

927. Summary proceedings.

Summary proceedings for any offence¹ may be taken against a body corporate² at any place at which the body has a place of business, and against any other person at any place at which he is for the time being³.

Any information relating to such an offence which is triable by a magistrates' court may be so tried⁴ if it is laid at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions⁵ or the Secretary of State⁶, as the case may be, to justify the proceedings comes to his knowledge⁷.

1 ie under the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended).

2 For the meaning of 'body corporate' see COMPANIES vol 14 (2009) PARA 1.

3 Insolvency Act 1986 s 431(1). This is without prejudice to any jurisdiction exercisable apart from this provision: s 431(1).

4 ie notwithstanding anything in the Magistrates' Courts Act 1980 s 127(1): see MAGISTRATES vol 29(2) (Reissue) para 589.

5 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq.

6 As to the Secretary of State see para 11 note 10 ante.

7 Insolvency Act 1986 s 431(2). For these purposes, a certificate of the Director of Public Prosecutions or the Secretary of State, as the case may be, as to the date on which such evidence came to his knowledge is conclusive evidence: s 431(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

924-928 Prosecutions and Summary Proceedings; Offences by Bodies Corporate

As to legal professional privilege in relation to offences under the Insolvency Act 1986, see ss 434A, 434C; and PARA 928A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate/928. Offences by bodies corporate.

928. Offences by bodies corporate.

In relation to offences under the Insolvency Act 1986, with certain exceptions¹, where a body corporate² is guilty of an offence and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary³ or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly⁴.

Where the affairs of a body corporate are managed by its members, these provisions apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate⁵.

1 The offences excepted are those under the Insolvency Act 1986 s 30 (see COMPANIES vol 15 (2009) PARA 1345), s 39 (see COMPANIES vol 15 (2009) PARA 1344), s 85 (see para 944 post), s 89 (see para 941 post), s 164 (see paras 563 ante, 956 post), s 188 (see para 487 ante), s 201 (see paras 1021-1022 post), s 206 (as amended) (see para 905 ante), s 207 (see para 908 ante), s 208 (see para 906 ante), s 209 (see para 907 ante), s 210 (see para 909 ante), s 211 (see para 910 ante), Sch A1 paras 16(2), 17(3)(a) (as added) (see para 89 ante), Sch A1 paras 18(3)(a), 19(3)(a) (as added) (see para 90 ante), Sch A1 para 22(1) (as added) (see para 91 ante) and Sch A1 para 23(1)(a) (as added) (see para 92 ante): s 432(4) (amended by the Insolvency Act 2000 s 1, Sch 1 paras 1, 11).

2 For the meaning of 'body corporate' see COMPANIES vol 14 (2009) PARA 1.

3 The exception in the case of insolvency proceedings relating to limited liability partnerships: see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1309 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 Insolvency Act 1986 s 432(1), (2).

5 Ibid s 432(3).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

924-928 Prosecutions and Summary Proceedings; Offences by Bodies Corporate

As to legal professional privilege in relation to offences under the Insolvency Act 1986, see ss 434A, 434C; and PARA 928A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/(15) OFFENCES; PERSONAL LIABILITY FOR THE COMPANY'S DEBTS; DISQUALIFICATION ORDERS/(v) Prosecutions and Summary Proceedings; Offences by Bodies Corporate/928A. Legal professional privilege.

928A. Legal professional privilege.

The following provisions have effect for the purposes of the Insolvency Act 1986 Pts 1-7 (ss 1-251), and ss 411, 413, 414, 416 and 417: s 434A (ss 434A, 434C added by SI 2008/948). In proceedings against a person for an offence under the Insolvency Act 1986 nothing in that Act is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege: s 434C.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

924-928 Prosecutions and Summary Proceedings; Offences by Bodies Corporate

As to legal professional privilege in relation to offences under the Insolvency Act 1986, see ss 434A, 434C; and PARA 928A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/929. Early dissolution.

(16) DISSOLUTION OF THE COMPANY

929. Early dissolution.

The official receiver¹ may at any time apply to the registrar of companies² for the early dissolution of a company³ in respect of which a winding-up order⁴ has been made by the court⁵ in England and Wales if he is the liquidator⁶ of the company, and it appears to him that the realisable assets of the company are insufficient to cover the expenses of the winding up⁷, and that the affairs of the company do not require any further investigation⁸.

Before making such an application, the official receiver must give not less than 28 days' notice of his intention to do so to the company's creditors and contributories⁹ and, if there is an administrative receiver¹⁰ of the company, to that receiver¹¹.

With the giving of such notice the official receiver ceases, subject to any directions made by the Secretary of State¹², to be required to perform any duties imposed on him in relation to the company, its creditors or its contributories by virtue of any provision of the Insolvency Act 1986, apart from a duty to make an application for the early dissolution of the company¹³.

On the receipt of the official receiver's application for the early dissolution of the company, the registrar must forthwith register it and, at the end of the period of three months beginning with the day of the registration of the application, the company is dissolved¹⁴; but the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions¹⁵ at any time before the end of that period¹⁶.

1 As to the official receiver see para 503 et seq ante.

2 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

4 As to the making of winding-up orders see para 438 et seq ante.

5 For the meaning of 'court' see para 4 ante.

6 As to the liquidator see para 950 et seq post.

7 All fees, costs, charges and other expenses incurred in the course of winding-up proceedings are to be regarded as expenses of the winding up: see the Insolvency Rules 1986, SI 1986/1925, r 12.2 (amended by SI 2003/1730). See also *Re Floor Fourteen Ltd, Lewis v IRC* [2001] 3 All ER 499, [2001] 2 BCLC 392, CA. As to the prescribed order of priority of payment of such expenses see para 810 et seq ante.

8 See the Insolvency Act 1986 s 202(1), (2).

9 For the meaning of 'contributory' see para 703 ante.

10 As to administrative receivers see para 380 et seq ante.

11 Insolvency Act 1986 s 202(3). As to the giving of notice see para 1088 post.

12 Ie under ibid s 203: see para 930 post. As to the Secretary of State see para 11 note 10 ante.

13 Ibid s 202(4).

14 Ibid s 202(5). As to the registrar's power to strike a defunct company off the register see COMPANIES vol 15 (2009) PARAS 1523, 1525.

15 See note 12 supra.

16 Insolvency Act 1986 s 202(5).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/930. Consequence of notice of application for early dissolution.

930. Consequence of notice of application for early dissolution.

Where a notice has been given by the official receiver¹ of his intention to apply for the early dissolution of a company², the official receiver or any creditor or contributory³ of the company or the administrative receiver⁴ of the company, if there is one, may apply to the Secretary of State⁵ for directions⁶. The directions may make such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no such notice had been given and may, in the case of an application for directions after registration of the application for early dissolution⁷, include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit⁸.

The grounds on which an application for directions may be made are:

- 1298 (1) that the realisable assets of the company are sufficient to cover the expenses of the winding up⁹;
- 1299 (2) that the affairs of the company do require further investigation; or
- 1300 (3) that, for any other reason, the early dissolution of the company is inappropriate¹⁰.

Where the Secretary of State gives such a direction, he must send two copies of the direction to the applicant for it¹¹. Of those copies one must be sent by the applicant to the registrar of companies¹².

An appeal to the court lies from any decision of the Secretary of State on an application for directions¹³. Following any such appeal, the court must send two sealed copies of its order to the person in whose favour the appeal was determined; and that party must send one of the copies to the registrar of companies¹⁴.

It is the duty of the person on whose application any directions are so given, or in whose favour an appeal with respect to an application for such directions is determined, within seven days after the giving of the directions or the determination of the appeal, to deliver to the registrar of companies for registration such a copy of the directions or determination as is prescribed¹⁵. If a person without reasonable excuse fails to deliver a copy as so required, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum¹⁶.

1 Ie under the Insolvency Act 1986 s 202(3): see para 929 ante. As to the official receiver see para 503 et seq ante.

2 Ie under ibid 202(2): see para 929 ante. For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

3 For the meaning of 'contributory' see para 703 ante.

4 As to administrative receivers see para 380 et seq ante.

5 As to the Secretary of State see para 11 note 10 ante.

6 Insolvency Act 1986 s 203(1).

7 le under *ibid* s 202(5): see para 929 ante.

8 *Ibid* s 203(3). Unless deferred, dissolution of the company takes effect three months after the application for early dissolution is registered: see s 202(5); and para 929 ante.

9 See para 929 note 7 ante.

10 Insolvency Act 1986 s 203(2).

11 Insolvency Rules 1986, SI 1986/1925, r 4.224(1).

12 *Ibid* r 4.224(2). As to the applicant's duty to deliver a copy to the registrar of companies see the Insolvency Act 1986 s 203(5); and the text to note 15 *infra*.

13 *Ibid* s 203(4). As to the procedure on appeal see para 1039 post.

14 Insolvency Rules 1986, SI 1986/1925, r 4.225. As to the form of the order see rr 4.225, 12.7(1), Sch 4 Form 4.69.

15 Insolvency Act 1986 s 203(5).

16 *Ibid* ss 203(6), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

930 Consequence of notice of application for early dissolution

NOTE 14--SI 1986/1925 Sch 4 Form 4.69 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/931. Dissolution of the company.

931. Dissolution of the company.

On the receipt by the registrar of companies¹ of a notice from the liquidator² that the final meeting of the company's creditors has been held³, or of a notice from the official receiver⁴ that the winding up of a company by the court⁵ is complete, the registrar must forthwith register the notice and, subject to the provisions described below, at the end of the period of three months beginning with the day of the registration of the notice, the company⁶ is dissolved⁷.

The Secretary of State⁸ may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit⁹. Where he gives such a direction, the Secretary of State must send two copies of the direction to the applicant for it¹⁰. Of those copies, one must be sent by the applicant to the registrar of companies¹¹.

An appeal to the court lies from any decision of the Secretary of State on an application for such a direction¹². Following any such appeal, the court must send two sealed copies of its order to the person in whose favour the appeal was determined; and that person must send one of the copies to the registrar of companies¹³.

It is the duty of the person on whose application a direction is given, or in whose favour an appeal with respect to an application for such a direction is determined, within seven days after the giving of the direction or the determination of the appeal, to deliver to the registrar of companies for registration such a copy of the direction or determination as is prescribed¹⁴. If a person without reasonable excuse fails to deliver a copy as so required, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum¹⁵.

1 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

2 As to the liquidator see para 950 et seq post.

3 Ie a notice served for the purposes of the Insolvency Act 1986 s 172(8); see para 618 ante.

4 As to the official receiver see para 503 et seq ante.

5 As to winding up by the court see para 438 et seq ante. For the meaning of 'court' see para 4 ante.

6 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a) (definition applied by the Insolvency Act 1986 s 251). See also COMPANIES vol 14 (2009) PARA 24.

7 Ibid s 205(1), (2). As to the registrar's power to strike a defunct company off the register see COMPANIES vol 15 (2009) PARAS 1523, 1525.

8 As to the Secretary of State see para 11 note 10 ante.

9 Insolvency Act 1986 s 205(3).

10 Insolvency Rules 1986, SI 1986/1925, r 4.224(1).

11 Ibid r 4.224(2). As to the applicant's duty to send a copy to the registrar see the Insolvency Act 1986 s 205(6); and the text to note 14 infra.

12 Ibid s 205(4). As to the procedure on appeal see para 1039 post.

13 Insolvency Rules 1986, SI 1986/1925, r 4.225. As to the form of the order see rr 4.225, 12.7(1), Sch 4 Form 4.69.

14 Insolvency Act 1986 s 205(6).

15 Ibid ss 205(7), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

931 Dissolution of the company

NOTE 13--SI 1986/1925 Sch 4 Form 4.69 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/932. Effect of dissolution.

932. Effect of dissolution.

The dissolution puts an end to the existence of the company¹. Unless and until it has been set aside, it prevents any proceedings being taken against promoters, directors or officers of the company to recover money or property² due or belonging to it³ or to prove a debt due from it⁴. When the company is dissolved, the liquidator's⁵ statutory duty towards the creditors and contributories⁶ is gone; but, if he has committed a breach of his duty to any creditor by distributing the assets without complying with the requirements of the Insolvency Act 1986, he is liable in damages to him⁷.

A judgment obtained against a company after its dissolution is invalid; and the solicitor acting for the company is liable personally to pay the claimant's costs of the claim from the date of the dissolution and consequent revocation of his authority⁸. Where proceedings are pending against a company which is about to be dissolved, the court may stay proceedings in the winding up for the purpose of delaying the dissolution⁹.

1 *Salton v New Beeston Cycle Co* [1900] 1 Ch 43. For the meaning of 'company' see COMPANIES vol 14 (2009) PARA 24.

2 As to the meaning of 'property' see para 489 note 8 ante.

3 *Coxon v Gorst* [1891] 2 Ch 73.

4 *Re Westbourne Grove Drapery Co* (1878) 39 LT 30. It has been held that a waste management licence granted under the Environmental Protection Act 1990 Pt II (ss 29-78) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 620 et seq) ceases to exist upon dissolution of the licensee company: *Re Wilmott Trading Ltd (in liquidation) (Nos 1 and 2)* [1999] 2 BCLC 541, [2000] BCC 321.

5 As to the liquidator see para 950 et seq post.

6 For the meaning of 'contributory' see para 703 ante.

7 See *Pulsford v Devenish* [1903] 2 Ch 625; *Argylls Ltd v Coxeter* (1913) 29 TLR 355; *Lamey v Winram* (1987) 3 BCC 156, 1987 SLT 635, Ct of Sess. Cf *James Smith & Sons (Norwood) Ltd v Goodman* [1936] Ch 216, CA. It has been held, applying *Pulsford v Devenish* supra, that liquidators, and the firm to which they belong, may owe a duty of care to individual creditors in respect of the conduct of the winding up where the company is not dissolved: *A & J Fabrications Ltd v Grant Thornton* [1998] 2 BCLC 227, [1999] BCC 807 (where the liquidators were appointed pursuant to an agreement between the creditors and the firm which employed the liquidators).

8 *Salton v New Beeston Cycle Co* [1900] 1 Ch 43 (where the solicitor was ordered to pay the plaintiff's costs only from the date when he knew, or by using due diligence might have known, that the company was dissolved). This limitation was, however, disapproved in *Yonge v Toynbee* [1910] 1 KB 215 at 228, 233, CA.

The decisions in *Re Crookhaven Mining Co* (1866) LR 3 Eq 69 and in *Whiteley Exerciser Ltd v Gamage* [1898] 2 Ch 405, to the effect that, after dissolution, the court has jurisdiction to make an order upon an application made before the dissolution, where the hearing of the application is delayed owing to the state of business of the court, can hardly be reconciled with the other authorities, particularly *Morris v Harris* [1927] AC 252 at 259, HL. See also *Re Eastern Investment Co Ltd* [1905] 1 Ch 352 at 355.

9 See the Insolvency Act 1986 s 147(1); and para 902 ante. See also *Re Eastern Investment Co* [1905] 1 Ch 352.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

932-933 Effect of dissolution, Property of dissolved company as bona vacantia

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/933. Property of dissolved company as bona vacantia.

933. Property of dissolved company as bona vacantia.

When a company¹ is dissolved, all property² and rights whatsoever vested in or held on trust for it immediately before its dissolution, including leasehold property but not including property held by the company on trust for any other person, are deemed to be bona vacantia³ and accordingly belong to the Crown, or to the Duchy of Lancaster, or to the Duke of Cornwall for the time being, as the case may be, and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall⁴. This has effect subject to certain exceptions⁵ and without prejudice to any order made by the court⁶ declaring the dissolution to have been void⁷, or restoring to the register⁸ a company which has been struck off as defunct⁹.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a); and COMPANIES vol 14 (2009) PARA 24.

2 As to the meaning of 'property' see para 489 note 8 ante. For these purposes, 'property' does not include a waste management licence granted under the Environmental Protection Act 1990 Pt II (ss 29-78) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 620 et seq): *Re Willmott Trading Ltd (in liquidation) (Nos 1 and 2)* [1999] 2 BCLC 541, [2000] BCC 321.

3 As to bona vacantia see further CROWN PROPERTY vol 12(1) (Reissue) para 235 et seq.

4 Companies Act 1985 s 654(1). The corresponding provision of the Companies Act 1929 was not retrospective and did not affect the Crown's right to any property which had not accrued before that Act came into force: *Re Sir Thomas Spencer Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA. As regards the rights of the Crown on the dissolution of a company prior to that Act, the law relating to the dissolution of corporations generally applied: see *Re Sir Thomas Spencer Wells, Swinburne-Hanham v Howard* supra; applied in *Re Strathblaine Estates Ltd* [1948] Ch 228, [1948] 1 All ER 162 (land held by company on trust for its shareholders, and therefore exempt from the Companies Act 1948 s 354 (repealed and, in the material respects, replaced by the Companies Act 1985 s 654)). See also *Hastings Corp'n v Letton* [1908] 1 KB 378. As to the effect of dissolution of a corporation see CORPORATIONS vol 9(2) (2006 Reissue) para 1304. The Insolvency Act 1986 s 180 (see para 880 ante) applies to land in England and Wales which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under s 180: Companies Act 1985 s 658(1) (substituted by the Insolvency Act 1985 s 109, Sch 6 para 47; and amended by the Insolvency Act 1986 s 439(1), Sch 13 Pt I). For the purposes of the Companies Act 1985 s 658 (as amended), 'company' includes any body corporate: s 658(2). For the meaning of 'body corporate' see COMPANIES vol 14 (2009) PARA 1. The provisions of s 654 are inapplicable to companies registered abroad (*Russian and English Bank v Baring Bros & Co* [1936] AC 405 at 439, [1936] 1 All ER 505 at 527, HL) nor do they prevent the liquidator from concluding the liquidation (*Re Katherine et Cie Ltd* [1932] 1 Ch 70 at 79). As to bona vacantia in the case of dissolution of a foreign company see para 1160 post.

5 Ie the Companies Act 1985 s 655: see para 934 post.

6 For the meaning of 'court' see para 4 ante.

7 Ie under the Companies Act 1985 s 651 (as amended): see para 937 post. Where an order is made under s 651 (as amended), any property which purported to vest in the Crown is to be deemed never to have so vested: see para 937 text and note 15 post.

8 Ie under *ibid* s 653 (as amended).

9 *Ibid* s 654(2). Section 654 refers to orders made under s 651 (as amended) or s 653 (as amended). Where an order is made under s 653 (as amended), no question as to bona vacantia can arise; but, if the court were to make an order for the compulsory winding up of a company which had been struck off the register without also ordering its restoration to the register, it is doubtful whether the Crown's claim to bona vacantia would be

defeated, since it is not clear that such an order would be made 'under' s 653 (as amended) (which merely saves the power to make such an order), and it is doubtful whether such an order would be within the saving: *Re Cambridge Coffee Room Association Ltd* [1952] 1 All ER 112n. See further COMPANIES vol 15 (2009) PARA 1523. But see also *Russian and English Bank v Baring Bros & Co* [1936] AC 405 at 426-427, [1936] 1 All ER 505 at 518, HL; and para 1160 post.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

932-933 Effect of dissolution, Property of dissolved company as bona vacantia

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/934. Effect of company's revival after dissolution on property as bona vacantia.

934. Effect of company's revival after dissolution on property as bona vacantia.

Where a company¹ is dissolved and any property² or right vests as bona vacantia³, the person in whom the property or right is vested may dispose of, or of an interest in, that property or right notwithstanding any order which may be made by the court⁴ declaring the dissolution to have been void⁵, or restoring to the register⁶ a company which has been struck off as defunct⁷.

Where any such order is made:

1301 (1) it does not affect that disposition (but without prejudice to the order so far as it relates to any other property or right previously vested in or held on trust for the company)⁸; and

1302 the Crown or, as the case may be, the Duke of Cornwall must pay to the company: (a) an amount equal to the amount of any consideration received for the property or right, or interest in it, or to the value of any such consideration at the time of the disposition; or (b) if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition⁹.

1 For the meaning of 'company' see the Companies Act 1985 s 735(1)(a). See also COMPANIES vol 14 (2009) PARA 24.

2 As to the meaning of 'property' see para 489 note 8 ante.

3 Ie in accordance with the Companies Act 1985 s 654: see para 933 ante. As to bona vacantia see further CROWN PROPERTY vol 12(1) (Reissue) para 235 et seq.

4 For the meaning of 'court' see para 4 ante.

5 Ie under the Companies Act 1985 s 651 (as amended): see paras 933 note 7 ante, 937 post.

6 Ie under ibid s 653 (as amended).

7 Ibid s 655(1). Section 655 applies in relation to the disposition of any property, right or interest on or after 22 December 1981, whether the company concerned was dissolved before, on or after that day: s 655(5).

8 Ibid s 655(2)(a).

9 Ibid s 655(2)(b). Where a liability accrues under s 655(2) in respect of any property or right which, before the order under s 651 (as amended) or s 653 (as amended) was made, had accrued as bona vacantia to the Duchy of Lancaster, the Attorney General of the Duchy must represent Her Majesty in any proceedings arising in connection with that liability: s 655(3). Where a liability accrues under s 655(2) in respect of any property or right which, before the order under s 651 (as amended) or s 653 (as amended) was made, had accrued as bona vacantia to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint must represent the Duke (or other possessor) in any proceedings arising out of that liability: s 655(4).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/935. Disclaimer by the Crown.

935. Disclaimer by the Crown.

Where property¹ vests in the Crown as bona vacantia², the Crown's title to it may be disclaimed by a notice signed by the Treasury Solicitor³. The right to execute a notice of disclaimer may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention⁴. The notice of disclaimer is of no effect unless it is executed within 12 months of the date on which the vesting came to the Treasury Solicitor's notice, or, if an application in writing is made to him by any person interested in the property requiring him to decide whether or not he will disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved⁵. The notice of disclaimer must be delivered to the registrar of companies⁶ and retained and registered by him; and copies must be published in the Gazette⁷ and sent to any persons who have given the Treasury Solicitor notice that they claim to be interested in the property⁸. These provisions apply with appropriate modification to property vested in the Duchy of Lancaster or the Duke of Cornwall⁹.

1 As to the meaning of 'property' see para 489 note 8 ante.

2 *Ie* under the Companies Act 1985 s 654: see para 933 ante. As to bona vacantia see further CROWN PROPERTY vol 12(1) (Reissue) para 235 et seq.

3 *Ibid* s 656(1). Where notice of disclaimer is so executed as respects any property, that property is deemed not to have vested in the Crown under s 654: s 657(1). The Insolvency Act 1986 s 178(4) (see para 868 ante) and ss 179-182 (see paras 874, 876-877, 880 ante) apply as if the property had been disclaimed by the liquidator under s 178 immediately before the dissolution of the company: Companies Act 1985 s 657(2) (substituted by the Insolvency 1985 s 109, Sch 6 para 46; and amended by the Insolvency Act 1986 s 439(1), Sch 13 Pt I); *Re No 1 London Ltd* [1991] BCLC 501, [1991] BCC 118. If the company is subsequently restored to the register, the property is deemed never to have vested in the Crown and the disclaimer is treated as never having occurred: *Allied Dunbar Assurance plc v Fowle* [1994] 2 BCLC 197, [1994] BCC 422.

4 Companies Act 1985 s 656(2).

5 *Ibid* s 656(3). Until the contrary is proved, a statement in a notice of disclaimer that the vesting came to the Treasury Solicitor's notice on a specified date, or that no such application was received by him with respect to the property before a specified date, is sufficient evidence of the fact stated: s 656(4).

6 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

7 As to the Gazette, and the gazetting of notices, see para 1048 post.

8 Companies Act 1985 s 656(5).

9 See *ibid* s 656(6). As to the application of these provisions to property in Scotland see ss 656(1)-(6), 657(3)-(7).

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/936. New trustee and vesting order.

936. New trustee and vesting order.

Where a company which is a trustee has been dissolved, the court may appoint a new trustee¹ and make a vesting order vesting any land or interest in it, or rights relating to stock and things in action, in the persons who, on the appointment, are the trustees².

¹ See the Trustee Act 1925 s 41(1) (as amended); and TRUSTS vol 48 (2007 Reissue) paras 849, 856.

² See *ibid* ss 44, 51(1); *Re C and H Crichton (1921) Ltd* [1932] WN 208; *Re Strathblaine Estates Ltd* [1948] Ch 228, [1948] 1 All ER 162; and TRUSTS vol 48 (2007 Reissue) paras 875, 884. As to things in action see CHOSER IN ACTION.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/937. Power to declare dissolution void.

937. Power to declare dissolution void.

Where a company¹ has been dissolved², the court³ may, on an application being made for the purpose by the liquidator⁴ of the company or by any other person appearing to the court to be interested⁵, make an order, on such terms as it thinks fit, declaring the dissolution to have been void⁶; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved⁷. Such an application may not be made after the end of the period of two years from the date of the dissolution of the company⁸. However, in the case of an application for the purpose of bringing proceedings against the company for damages in respect of personal injuries⁹ or for damages under the Fatal Accidents Act 1976¹⁰, an application may be made at any time; but no order may be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought¹¹.

As a rule the court will make the order if there are assets which belonged to or could have been recovered by the liquidator or the dissolved company, and if the applicant has a claim to be satisfied out of them¹². The order makes the dissolution void ab initio; any property¹³ of the company which on the dissolution was deemed to vest in the Crown as bona vacantia¹⁴ is to be treated as never having so vested¹⁵. The company is, however, to be treated as having been restored to life but not to activity in the interval between the dissolution and the order avoiding the dissolution, and the court order does not validate proceedings against the company taken between the date of dissolution and avoidance, nor does it revive a pending claim, which dies with the dissolution of the company¹⁶. Where a corporation is revived after dissolution, its rights prior to dissolution are not affected¹⁷.

An order will not be made unless it is proved that notice has been served on the Treasury Solicitor in order to ascertain whether he desires to intervene on behalf of the Crown¹⁸.

It is the duty of the person on whose application the order was made, within seven days after the making of the order or such further time as the court may allow, to deliver to the registrar of companies¹⁹ for registration an office copy of the order; and, if he fails to do so, he is liable to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum²⁰.

¹ For the meaning of 'company' see the Companies Act 1985 s 735(1)(a); and COMPANIES vol 14 (2009) PARA 24.

² This includes a dissolution following a voluntary winding up (see eg *Re CW Dixon Ltd* [1947] Ch 251, [1947] 1 All ER 279; and para 1020 et seq post) and dissolution consequent upon the company being struck off the register under the Companies Act 1985 s 652: *Re Belmont & Co Ltd* [1952] Ch 10, [1951] 2 All ER 898; followed in *Re Test Holdings (Clifton) Ltd* [1970] Ch 285, [1969] 3 All ER 517. It seems, however, that an order cannot be made in respect of a company dissolved as the result of an amalgamation under the Companies Act 1985 s 427: *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014 at 1021, 1042, [1940] 3 All ER 549 at 553, 567-568, HL.

³ For the meaning of 'court' see para 4 ante.

⁴ As to the liquidator see para 950 et seq post.

⁵ See *Re Spottiswoode, Dixon and Hunting Ltd* [1912] 1 Ch 410 (a successful application by a company in which the dissolved company had held shares, and on which there were still calls unpaid); *Re Henderson's Nigel Co Ltd* (1911) 105 LT 370 (an application by a liquidator of a company who had realised assets after its

dissolution was granted, the Crown consenting); *Re Belmont & Co Ltd* [1952] Ch 10, [1951] 2 All ER 898 (application by a creditor whose debt was disputed); *Re Wood and Martin (Bricklaying Contractors) Ltd* [1971] 1 All ER 732, [1971] 1 WLR 293 (application by a liquidator de son tort). Cf *Re Roehampton Swimming Pool Ltd* [1968] 3 All ER 661, [1968] 1 WLR 1693 (solicitor whose client is interested but who has not herself a financial or proprietary interest has no status to apply in her own name).

6 Companies Act 1985 s 651(1) (amended by the Companies Act 1989 ss 141(1), (2), 212, Sch 24).

7 Companies Act 1985 s 651(2); and see *Re Dove Spinning Co Ltd* (1923) 155 LT Jo 232; *M'Call and Stephen Ltd* (1920) 37 SLR 480; *Re Thompson and Riches Ltd* [1981] 2 All ER 477, [1981] 1 WLR 682. Where the company is not in liquidation, the registrar of companies should be made a respondent: *Re Test Holdings (Clifton) Ltd* [1970] Ch 285 at 292, [1969] 3 All ER 517 at 522. The court has no power to declare the dissolution void for a limited purpose: *Re Champdany Jute Co Ltd* 1924 SC 209, Ct of Sess. See also *Re Servers of the Blind League* [1960] 2 All ER 298, [1960] 1 WLR 564 (where the court refused to make an order to enable a company to benefit under a will after dissolution).

8 Companies Act 1985 s 651(4) (added by the Companies Act 1989 s 141(1), (3)).

9 Ie including any sum claimed by virtue of the Law Reform (Miscellaneous Provisions) Act 1934 s 1(2)(c) (funeral expenses): see CREMATION AND BURIAL vol 10 (Reissue) para 938; DAMAGES vol 12(1) (Reissue) paras 938-939; EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) para 817. For these purposes, 'personal injuries' includes any disease and any impairment of a person's physical or mental condition: Companies Act 1985 s 651(7) (added by the Companies Act 1989 s 141(1), (3)). As to claims for personal injury see DAMAGES vol 12(1) (Reissue) para 878 et seq.

10 See DAMAGES vol 12(1) (Reissue) para 932 et seq.

11 Companies Act 1985 s 651(5) (added by the Companies Act 1989 s 141(1), (3)). Nothing in the Companies Act 1985 s 651(5) (as added) affects the power of the court on making an order to direct that the period between the dissolution of the company and the making of the order is not to count for the purposes of any such enactment as is referred to in s 651(5) (as added): s 651(6) (added by the Companies Act 1989 s 141(1), (3)).

When a restoration order is sought by a prospective claimant in a personal injuries claim, a direction that the period from dissolution to the date of the restoration order should not count for limitation purposes should not normally be made unless: (1) notice of the application has first been given to all those persons who may be expected to oppose the giving of such a direction, including the company's insurers; and (2) the court is satisfied that: (a) it has before it all the evidence which the parties would wish to adduce on an application by the prospective claimant under the Limitation Act 1980 s 33 (see LIMITATION PERIODS vol 68 (2008) PARAS 1001-1002); and (b) an application under s 33 would be bound to succeed: *Smith v White Knight Laundry Ltd* [2001] EWCA Civ 660, [2001] 3 All ER 862, [2001] 2 BCLC 206, CA. An application for a declaration that the dissolution of a company is void may be prejudiced by delay on the part of the applicant: *Whitbread (Hotels) Ltd, petitioners sub nom Whitbread (Hotels) Ltd v Walkmore (95) Ltd* 2002 SLT 178, (2002) Times, 18 January, OH.

An application may be made under the Companies Act 1985 s 651(5) (as added) in relation to a company dissolved before 16 November 1989 notwithstanding that the time within which the dissolution might formerly have been declared void under s 651 (as amended) had expired before 16 November 1989; but no such application may be made in relation to a company dissolved more than 20 years before 16 November 1989: Companies Act 1989 s 141(4). Except as provided by s 141(4), the amendments made by s 141 do not apply in relation to a company which was dissolved more than two years before 16 November 1989: s 141(5).

12 See the cases cited in note 5 supra; and *Morris v Harris* [1927] AC 252, HL.

13 As to the meaning of 'property' see para 489 note 8 ante.

14 See para 933 ante. As to bona vacantia see further CROWN PROPERTY vol 12(1) (Reissue) para 235 et seq.

15 *Re CW Dixon Ltd* [1947] Ch 251, [1947] 1 All ER 279.

16 *Morris v Harris* [1927] AC 252, HL; *Foster Yates and Thom Ltd v HW Edgehill Equipment Ltd* (1978) 122 Sol Jo 860, CA; *MH Smith (Plant Hire) Ltd v DL Mainwaring (t/a Inshore)* [1986] BCLC 342, 2 BCC 99, 262, CA (insurers claiming the right of subrogation cannot bring a claim in the name of a company which has been dissolved); *Re Philip Powis Ltd* [1998] 1 BCLC 440, [1998] BCC 756, CA (the court has no power under the Companies Act 1985 s 651 (as amended) to validate proceedings against the company started before the company was dissolved by adding terms to the order declaring the dissolution to be void). Misfeasance proceedings abate on dissolution and are not revived by an order avoiding the dissolution: *Re Lewis and Smart Ltd* [1954] 2 All ER 19, [1954] 1 WLR 755. As to the distinction in this respect between an order under the Companies Act 1985 s 651(1) (as amended) and an order under s 653 (as amended) restoring a company to the

register see *Tyman's Ltd v Craven* [1952] 2 QB 100, [1952] 1 All ER 613, CA; *Re Test Holdings (Clifton) Ltd* [1970] Ch 285, [1969] 3 All ER 517.

17 *Colchester Corpn v Seaber* (1766) 3 Burr 1866; *Re Higginson and Dean, ex p A-G* [1899] 1 QB 325 at 331.

18 *Re Home and Colonial Insurance Co Ltd* (1928) 44 TLR 718; *Practice Note* [1952] WN 170. In a simple case, the Treasury Solicitor's consent to an application should be demonstrated by exhibiting to the applicant's evidence a letter to that effect: *Re Belmont & Co Ltd* [1952] Ch 10 at 15, [1951] 2 All ER 898 at 901.

19 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

20 Companies Act 1985 ss 651(3), 730, Sch 24. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

937 Power to declare dissolution void

NOTE 11--Companies Act 1989 s 141(4) amended: Companies Act 2006 Sch 16.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/8. WINDING UP BY THE COURT/ (16) DISSOLUTION OF THE COMPANY/938. Dissolution by striking off the register.

938. Dissolution by striking off the register.

A company which is being wound up may also be dissolved by being struck off the register by the registrar of companies¹, when no liquidator² is acting or its affairs are fully wound up³.

1 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

2 As to the liquidator see para 950 et seq post.

3 See the Companies Act 1985 s 652(4). See also COMPANIES vol 15 (2009) PARA 1522.

UPDATE

438-938 Winding Up by the Court

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(1) REQUISITES FOR AND KINDS OF VOLUNTARY WINDING UP/939. Requisites for voluntary winding up.

9. VOLUNTARY WINDING UP

(1) REQUISITES FOR AND KINDS OF VOLUNTARY WINDING UP

939. Requisites for voluntary winding up.

A company may be wound up voluntarily:

- 1303 (1) when the period, if any, fixed for its duration by its articles of association expires, or the event, if any, occurs on the occurrence of which the articles provide that it is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily¹;
- 1304 (2) if the company resolves by special resolution² that it be wound up voluntarily³;
- 1305 (3) if the company resolves by extraordinary resolution⁴ to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up⁵.

In the Insolvency Act 1986 'a resolution for voluntary winding up' means a resolution passed under any of heads (1) to (3) above⁶. This power to wind up voluntarily cannot be excluded by any provision in the articles; but the right of the holders of certain classes of shares to vote at meetings of the company may be restricted or excluded⁷. The power applies also to registered industrial and provident societies⁸. An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the Financial Services Authority⁹.

Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge¹⁰ in respect of the company's property¹¹. Where such notice is given, a resolution for voluntary winding up may be passed only after the end of the period of five working days beginning with the day on which the notice was given, or if the person to whom the notice was given has consented in writing to the passing of the resolution¹².

1 Insolvency Act 1986 s 84(1)(a). A limited liability partnership may be wound up voluntarily when it determines that it is to be wound up voluntarily: see s 84(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

Articles of association do not, as a rule, contain any provisions as to the duration of the company, or mention any event on the happening of which the company is to be dissolved. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

2 As to special resolutions see COMPANIES vol 14 (2009) PARA 614.

3 Insolvency Act 1986 s 84(1)(b).

4 As to extraordinary resolutions see COMPANIES vol 14 (2009) PARA 615.

5 Insolvency Act 1986 s 84(1)(c).

6 Ibid s 84(2). A resolution passed under s 84(1)(a), as well as a special resolution under s 84(1)(b) and an extraordinary resolution under s 84(1)(c), is subject to the Companies Act 1985 s 380 (as amended) (copy of resolution to be forwarded to the registrar of companies within 15 days: see further COMPANIES vol 14 (2009) PARA 616): Insolvency Act 1986 s 84(3). See also para 944 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

The provisions of s 84(2), (3) do not apply in relation to the winding up of a limited liability partnership, in connection with which it is instead provided that within 15 days after a limited liability partnership has determined that it be wound up there must be forwarded to the registrar of companies either a printed copy or else a copy in some other form approved by the registrar of the determination, and that if a limited liability partnership fails to comply with this provision it and every designated member of it who is in default is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 84(3), (4); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3. For the meaning of 'designated member' see para 109 note 3 ante. As to the standard scale see para 31 note 4 ante.

7 See *Ellis v Dadson* (1891) 60 LJ Ch 353; *British Water Gas Syndicate Ltd v Notts and Derby Water Gas Co Ltd* [1889] WN 204; *Re Peveril Gold Mines Ltd* [1898] 1 Ch 122, CA; *Baring-Gould v Sharpington Combined Pick and Shovel Syndicate* [1899] 2 Ch 80, CA; *Payne v Cork Co Ltd* [1900] 1 Ch 308; cf *Welton v Saffery* [1897] AC 299, HL. See also COMPANIES vol 14 (2009) PARA 249.

8 See the Industrial and Provident Societies Act 1965 s 55(a) (as amended); para 436 ante; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2566.

9 Financial Services and Markets Act 2000 s 366. See FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 496. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

10 Ie a qualifying floating charge to which the Insolvency Act 1986 s 72A (as added and amended) applies: see para 382 ante.

11 Ibid s 84(2A) (s 84(2A), (2B) added by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 paras 8, 10). However, this does not apply in any case where a petition for an administration order was presented before 15 September 2003.

12 Insolvency Act 1986 s 84(2B) (as added: see note 11 supra). However, this does not apply in any case where a petition for an administration order was presented before 15 September 2003.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

939 Requisites for voluntary winding up

TEXT AND NOTES 1-5--1986 Act s 84(1)(c) repealed: SI 2007/2194.

TEXT AND NOTE 6--1986 Act s 84(2) amended: SI 2007/2194.

NOTE 6--1986 Act s 84(3) substituted: SI 2007/2194.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(1) REQUISITES FOR AND KINDS OF VOLUNTARY WINDING UP/940. Members' voluntary winding up and creditors' voluntary winding up.

940. Members' voluntary winding up and creditors' voluntary winding up.

A voluntary winding up may be either a members' voluntary winding up or a creditors' voluntary winding up¹. A winding up is termed a members' voluntary winding up where a declaration of solvency has been made and delivered in accordance with the statutory provisions²; and a winding up is termed a creditors' voluntary winding up where no such declaration has been made and delivered³. Certain provisions are applicable only to a members' voluntary winding up⁴; and certain provisions are applicable only to a creditors' voluntary winding up⁵. The law relating to voluntary winding up set out subsequently is applicable to both kinds of winding up except where expressly stated⁶.

1 The distinction between a members' voluntary winding up and a creditors' voluntary winding up was introduced by the Companies Act 1929 (repealed), and was intended to enable the creditors to secure control of any winding up in which they are primarily interested, namely any winding up in which the directors of the company cannot guarantee that the company will be solvent at the expiration of 12 months from the commencement of the winding up. Before the enactment of the Companies (Consolidation) Act 1908, the control of every voluntary liquidation was vested in the company and the liquidators appointed by it, unless the company delegated to its creditors the power of appointing their own nominee as liquidator. By the Companies (Consolidation) Act 1908 s 188 (repealed), the liquidator in a voluntary winding up was required to convene a meeting of creditors within seven days of his appointment at which they could determine whether to apply to the court to appoint a liquidator in place of or together with the liquidator appointed by the company, or to appoint a committee of inspection; application could then be made to the court to give effect to any such proposed appointment, and the court could make any order to give effect to it or such other order as, having regard to the creditors' and contributories' interests, might seem just (see para 953 note 4 post). Further, under s 190 (repealed) (which re-enacted the Companies Act 1862 s 135), a company could by extraordinary resolution delegate to the creditors or a committee of them the power of appointing liquidators or supplying vacancies, and arrange with the creditors as to the powers to be exercised by the liquidators. In practice, however, the shareholders usually retained control over a voluntary winding up except where the creditors were so prejudiced by the voluntary winding up as to justify the court in ordering the winding up of the company compulsorily or subject to the supervision of the court.

2 See para 941 post.

3 Insolvency Act 1986 s 90.

4 See *ibid* Pt IV Ch III (ss 91-96); and para 942 et seq post.

5 See *ibid* s 97, which applies Pt IV Ch IV (ss 98-106) (as amended) (see para 945 et seq post) to a creditors' voluntary winding up, except that ss 98, 99 do not apply where, under s 96 (see para 942 post), a members' voluntary winding up has become a creditors' voluntary winding up.

6 The provisions of *ibid* Pt IV Ch V (ss 107-116) (as amended) (see para 1009 et seq ante) apply to every voluntary winding up, whether a members' or a creditors' winding up.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

940 Members' voluntary winding up and creditors' voluntary winding up

NOTE 1--See *Tucker (joint supervisors of Energy Holdings (No 3) (in liquidation) v Gold Fields Mining LLC* [2009] EWCA Civ 173, [2009] BPIR 704, [2009] All ER (D) 123 (Mar) (construction of terms of a creditors' voluntary winding up arrangement).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(1) REQUISITES FOR AND KINDS OF VOLUNTARY WINDING UP/941. Statutory declaration of solvency.

941. Statutory declaration of solvency.

Where it is proposed to wind up a company voluntarily, the directors of the company¹, or, in the case of a company having more than two directors, the majority of them, may at a meeting of the directors make a statutory declaration² to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate³, within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration⁴. Such a declaration has no effect for the purposes of the Insolvency Act 1986 unless it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution⁵, and it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration⁶.

The declaration must be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed⁷. If the declaration is not so delivered within the time prescribed, the company, and every officer who is in default, is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁸.

A director so making a declaration without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁹; and, if the company is wound up in pursuance of a resolution passed¹⁰ within five weeks after the making of the declaration, and its debts, together with interest at the official rate, are not paid or provided for in full within the period specified in the declaration, then, unless the contrary is shown, it is to be presumed that the director did not have reasonable grounds for his opinion¹¹.

A declaration of solvency is not binding on creditors and does not prevent them from presenting a petition to wind up the company, if they can prove that it is insolvent¹².

1 In the case of a winding up in relation to a limited liability partnership, references to 'directors' in the Insolvency Act 1986 ss 89, 90 should be read as references to designated members: see ss 89, 90; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'designated member' see para 109 note 3 ante.

2 For the prescribed form of declaration see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 4.70 (substituted by SI 1987/1919).

3 The official rate, in relation to interest in respect of any debt, means whichever is the greater of: (1) the rate specified in the Judgments Act 1838 s 17 (as amended) on the day on which the company went into liquidation; and (2) the rate applicable to that debt apart from winding up: Insolvency Act 1986 ss 189(4), 251. The rate so specified is 8% per annum: Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, art 2).

4 Insolvency Act 1986 s 89(1). See para 940 note 1 ante.

5 Ibid s 89(2)(a). In the case of a winding up in relation to a limited liability partnership, it is instead provided that for these purposes the declaration must be made within the five weeks immediately preceding the date when the limited liability partnership determined that it be wound up voluntarily or on that date but before the making of the determination: see s 89(2)(a); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

A declaration for this purpose need not include every asset or liability (*De Courcy v Clements* [1971] Ch 693, [1971] 1 All ER 681). Deficiencies in a statement of assets and liabilities do not deprive the statement of the quality of a statement of assets and liabilities for these purposes and would not therefore have the result that the declaration of solvency would have no effect: *Re New Millennium Experience Co Ltd, Greenwich Millennium Exhibition Ltd v New Millennium Experience Co Ltd* [2003] EWHC 1823 (Ch), [2004] 1 All ER 687.

6 Insolvency Act 1986 s 89(2)(b). See note 5 *supra*.

7 Ibid s 89(3). In the case of a winding up in relation to a limited liability partnership, it is instead provided that the declaration must be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the partnership determined that it be wound up voluntarily: see s 89(3); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 *et seq*.

8 Insolvency Act 1986 ss 89(6), 430, Sch 10. For the meaning of 'officer who is in default' see COMPANIES vol 14 (2009) PARA 315. As to the statutory maximum, and as to daily default fines, see para 10 note 1 *ante*.

9 Ibid ss 89(4), 430, Sch 10.

10 Or, in the case of a winding up in relation to a limited liability partnership, voluntarily: see *ibid* s 89(5); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

11 Insolvency Act 1986 s 89(5).

12 As to the inability of a company to pay its debts as a ground for winding up see paras 444, 446 *ante*; as to the right of creditors to petition for winding up see paras 450-451 *ante*; as to the rule that a voluntary winding up does not bar a creditor from having a company wound up by the court see para 453 *ante*; and as to the liquidator's duties in a members' voluntary winding up in the event of the company appearing to be insolvent see para 942 *post*.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(1) REQUISITES FOR AND KINDS OF VOLUNTARY WINDING UP/942. Effect of insolvency in members' voluntary winding up.

942. Effect of insolvency in members' voluntary winding up.

Where, in the case of a members' voluntary winding up, the liquidator is of the opinion that the company will be unable to pay its debts in full, together with interest at the official rate¹, within the period stated in the directors' declaration², the liquidator must:

- 1306 (1) summon a meeting of creditors for a day not later than the twenty-eighth day after the day on which he formed that opinion;
- 1307 (2) send notices of the creditors' meeting to the creditors by post not less than seven days before the day on which that meeting is to be held;
- 1308 (3) cause notice of the creditors' meeting to be advertised once in the Gazette³ and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business⁴ in Great Britain was situated during the relevant period⁵; and
- 1309 (4) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require,

and the notice of the creditors' meeting must state the duty imposed under head (4) above⁶.

The liquidator must also make out a statement in the prescribed form as to the affairs of the company, lay that statement before the creditors' meeting, and attend and preside at that meeting⁷. The statement as to the affairs of the company must be verified by affidavit by the liquidator and must show particulars of the company's assets, debts and liabilities, the names and addresses of the company's creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further information as may be prescribed⁸.

If the liquidator without reasonable excuse fails to comply with the provisions described above, he is liable on summary conviction to a fine not exceeding the statutory maximum⁹.

As from the day on which the creditors' meeting is held, the Insolvency Act 1986 has effect as if the directors' declaration¹⁰ had not been made, and the creditors' meeting and (except in the case of a winding up in relation to a limited liability partnership) the company meeting at which it was resolved that the company be wound up voluntarily were the first meetings required in a creditors' voluntary winding up¹¹, and, accordingly, the winding up becomes a creditors' voluntary winding up¹². Where, in such a case, a creditors' meeting is held in accordance with the provisions described above, any appointment made¹³ or committee established¹⁴ by that meeting is deemed to have been made or established by a meeting held in accordance with the statutory provisions¹⁵ relating to creditors' meetings in a creditors' voluntary winding up¹⁶.

1 For the meaning of 'official rate' see para 941 note 3 ante.

2 I.e. under the Insolvency Act 1986 s 89: see para 941 ante. In the case of a winding up in relation to a limited liability partnership, the declaration is made by the designated members: see s 95(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'designated member' see para 109 note 3 ante.

3 For the meaning of 'the Gazette' see para 160 note 3 ante.

4 For the meaning of 'Great Britain' see para 12 note 2 ante.

5 For these purposes, 'the relevant period' means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily (Insolvency Act 1986 s 95(7)), except in the case of a winding up in relation to a limited liability partnership, where it means the period of six months immediately preceding the date on which the partnership determined that it be wound up voluntarily (see s 95(7); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3).

Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty referred to in the Insolvency Act 1986 s 95(2)(c) (see head (3) in the text) applies separately in relation to each of those localities: s 95(5). Where the company had no place of business in Great Britain during the relevant period, the references in s 95(2)(c) and s 95(5) to the company's principal place of business in Great Britain are to be read as references to its registered office: s 95(6).

6 Ibid s 95(1), (2). As to the further provisions governing the calling of and procedure at such a meeting see para 945 et seq post. Where a creditors' meeting is summoned by the liquidator under s 95 and the company in question is an authorised deposit-taker or former authorised deposit-taker, the same notice of the meeting must be given to the Financial Services Authority and the scheme manager established under the Financial Services and Markets Act 2000 s 212(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 583) as is given to creditors: see the Insolvency Rules 1986, SI 1986/1925, r 4.72(4) (amended by SI 1998/1129; SI 2001/3649). See further para 671 ante. For the meanings of 'authorised deposit-taker' and 'former authorised deposit-taker' see para 460 notes 18, 19 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

7 Insolvency Act 1986 s 95(3). As to the prescribed form of such statement of affairs and the liquidator's duty to deliver it to the registrar of companies see further para 947 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

8 Ibid s 95(4). See further para 947 post.

9 Ibid ss 95(8), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

10 Or, in the case of a winding up in relation to a limited liability partnership, the declaration made by the designated members: see ibid s 96; and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

11 I.e. the meetings mentioned in the Insolvency Act 1986 s 98: see para 945 et seq post.

12 Ibid s 96; Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3. For the purpose of the Insolvency Rules 1986, SI 1986/1925 (as amended), a winding up is treated as a creditors' voluntary winding up if, and from the time when, the liquidator forms the opinion that the company will be unable to pay its debts in full, and determines accordingly to summon a creditors' meeting under the Insolvency Act 1986 s 95 (see the text and notes 1-9 supra): Insolvency Rules 1986, SI 1986/1925, r 4.1(2) (amended by SI 1987/1919).

13 See para 953 post.

14 See para 994 post.

15 I.e. the Insolvency Act 1986 s 98: see para 945 post.

16 Ibid s 102.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

942 Effect of insolvency in members' voluntary winding up

TEXT AND NOTES 3-6--In the case of the winding up of a company registered in England and Wales, in head (3) for 'once at least ... relevant period' read 'may cause notice of the meeting to be advertised in such other manner as he thinks fit': Insolvency Act 1986 s 95(2A) (added by SI 2009/864). Insolvency Act 1986 s 95(2) amended by SI 2009/864 so that it applies only to the winding up of a company registered in Scotland. See SI 1986/1925 r 4.53C (CVL additional contents of notices gazetted or advertised under s 95) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(2) RESOLUTION FOR WINDING UP/943. Form of resolution for winding up.

(2) RESOLUTION FOR WINDING UP

943. Form of resolution for winding up.

An ordinary resolution¹ is sufficient for winding up a company in two cases only, namely where the period for its duration has expired or when the event on which it is to be dissolved has happened².

An extraordinary resolution³ will place a company in voluntary liquidation only where it is to the effect that, by reason of its liabilities, the company cannot continue its business, and that it is advisable to wind up⁴.

In all cases, other than those mentioned above, a special resolution⁵ is necessary⁶, as, for example, where it is desired to reconstruct the company, or there is no further use in continuing its existence.

Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge⁷.

1 As to ordinary resolutions see COMPANIES vol 14 (2009) PARA 613.

2 See the Insolvency Act 1986 s 84(1)(a); and para 939 ante.

3 As to extraordinary resolutions see COMPANIES vol 14 (2009) PARA 615.

4 See the Insolvency Act 1986 s 84(1)(c); and para 939 ante. The notice convening the meeting must inform the members clearly that it is proposed to pass the resolution (*Re Bridport Old Brewery Co* (1867) 2 Ch App 191; *Re Silkstone Fall Colliery Co* (1875) 1 ChD 38, CA), but the absence of notice does not invalidate the resolution where all the members of the company are present at the meeting and sign a minute of the resolution (*Re Oxted Motor Co Ltd* [1921] 3 KB 32, DC). A notice stating that a resolution in the terms of the Insolvency Act 1986 s 84(1)(c) will be proposed is sufficient: see *Stone v City and County Bank* (1877) 3 CPD 282, CA. A resolution for voluntary winding up cannot be passed conditional on another event: *Re Norditrack (UK) Ltd (in administration)* [2000] 1 All ER 369, [2000] 1 BCLC 467. A company may resolve to place itself into voluntary liquidation notwithstanding that a voluntary arrangement is in place in respect of the company: *Re Arthur Rathbone Kitchens Ltd* [1997] 2 BCLC 280, [1998] BCC 450.

5 As to special resolutions see COMPANIES vol 14 (2009) PARA 614.

6 See the Insolvency Act 1986 s 84(1)(b); and para 939 ante.

7 I.e. a qualifying floating charge to which Insolvency Act 1986 s 72A (as added and amended) applies (see para 382 ante): Insolvency Act 1986 s 84(2A) (s 84(2A), (2B) added by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 paras 8, 10). The addition of these provisions does not apply in any case where a petition for an administration order was presented before 15 September 2003. Where notice is given under the Insolvency Act 1986 s 84(2A) (as added), a resolution for voluntary winding up may be passed only after the end of the period of five business days beginning with the day on which the notice was given, or if the person to whom the notice was given has consented in writing to the passing of the resolution: s 84(2B) (as so added).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

943 Form of resolution for winding up

TEXT AND NOTES 3, 4--1986 Act s 84(1)(c) repealed: Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(2) RESOLUTION FOR WINDING UP/944. Procedure on resolution for winding up and applications for confirmation.

944. Procedure on resolution for winding up and applications for confirmation.

Notices of a meeting at which it is intended to propose an extraordinary or special resolution must be given, and the meeting must be held, in the manner provided by the Companies Act 1985 and the company's articles of association¹.

A resolution for voluntary winding up is not invalid by reason of its being passed contemporaneously with separate resolutions for a reconstruction scheme which are invalid². However, where notice is given of a series of resolutions relating to a general scheme of reconstruction, and a resolution for winding up only is passed, the resolution may be void³.

A copy of every winding-up resolution, either printed or in some other form approved by the registrar of companies, must be forwarded to and recorded by him within 15 days after the passing of the resolution⁴; and the company must, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette⁵. If default is made in so giving notice in the Gazette, the company, and every officer of the company (including, for this purpose, the liquidator) who is in default, is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum⁶.

Where a company has passed a resolution for voluntary winding up and no declaration of solvency has been made⁷, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the European Regulation on Insolvency Proceedings⁸ and on that application the court may confirm the winding up⁹. Such an application may also be made where a company has moved to a voluntary liquidation from administration¹⁰. Where the court has confirmed the creditors' voluntary winding up, the liquidator must forthwith give notice: (1) if there is a member state liquidator¹¹ in relation to the company, to the member state liquidator¹²; and (2) in accordance with the liquidator's duty¹³ to inform creditors¹⁴.

1 See the Companies Act 1985 s 378(6); and COMPANIES vol 14 (2009) PARAS 614-615. A special resolution has been held good even though shareholders abroad had less than the number of days' notice prescribed by the articles: *Re Union Hill Silver Co Ltd* (1870) 22 LT 400; *Re Newcastle United Football Co Ltd* [1932] WN 109. See also *Re Bailey, Hay & Co Ltd* [1971] 3 All ER 693, [1971] 1 WLR 1357 (short notice of meeting; all shareholders who had not voted in favour of resolution allowed it to pass and by their subsequent conduct were deemed to have accepted it). The length of notice required for a special resolution may be curtailed by agreement of a specified majority of the shareholders: see the Companies Act 1985 s 378(3) (as amended). See also and COMPANIES vol 14 (2009) PARA 614. As to notice of an extraordinary resolution see para 943 text and notes 3, 4 ante. The notices summoning the meetings must be issued by authority of a resolution of the board (*Re Haycraft Gold Reduction and Mining Co* [1900] 2 Ch 230; *Re State of Wyoming Syndicate* [1901] 2 Ch 431), but the want of authority may be waived by the presence of all those who have a right to vote (cf *Re Oxted Motor Co Ltd* [1921] 3 KB 32, DC). Where a winding-up petition is pending, it is a contempt of court to issue a circular to the shareholders containing misrepresentations with intent to obtain the passing of a voluntary winding-up resolution and thereby mislead the court as to the real view of the shareholders: *Re Septimus Parsonage & Co* [1901] 2 Ch 424. As to the declaration of the chairman being conclusive see COMPANIES vol 14 (2009) PARA 654; and as to the validity of such resolutions where no creditors' meeting is held see para 953 note 4 post.

Where the company is an authorised deposit-taker or former authorised deposit-taker within the meaning of the Insolvency Rules 1986, SI 1986/1925, r 13.12A (as added) (see para 460 notes 18, 19 ante), notice of any meeting of the company at which it is intended to propose a resolution for its winding up must be given to the scheme manager established under the Financial Services and Markets Act 2000 s 212(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 583) and the Financial Services Authority; and such notice must be the same as that given to members of the company: Insolvency Rules 1986, SI 1986/1925, r 4.72(1)-(3) (amended by SI

1987/1919; SI 1998/1129; SI 2001/3649). See further para 671 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

2 *Thomson v Henderson's Transvaal Estates Ltd* [1908] 1 Ch 765, CA; *Re Irrigation Co of France, ex p Fox* (1871) 6 Ch App 176, CA; *Cleve v Financial Corpn* (1873) LR 16 Eq 363; cf *Stone v City and County Bank* (1877) 3 CPD 282 at 307, 313, CA.

3 *Re Teede and Bishop Ltd* (1901) 70 LJ Ch 409, as explained in *Thomson v Henderson's Transvaal Estates Ltd* [1908] 1 Ch 765, CA; cf *Re Gutta Percha Corpn* [1900] 2 Ch 665 at 670.

4 See the Companies Act 1985 s 380(1), (4)(a), (b), (j) (as amended); para 939 note 6 ante; and COMPANIES vol 14 (2009) PARA 616. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

5 Insolvency Act 1986 s 85(1). In the case of a winding up relating to a limited liability partnership, it is instead provided that when a limited liability partnership has determined that it is to be wound up voluntarily, it must within 14 days after the making of the determination give notice of the determination by advertisement in the Gazette: see s 85(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. As to the Gazette, and the gazetting of notices, see para 1048 post.

6 Insolvency Act 1986 ss 85(2), 430, Sch 10. For the meaning of 'officer who is in default' see COMPANIES vol 14 (2009) PARA 315. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

7 *Ie* under *ibid* s 89 (see para 941 ante).

8 Insolvency Rules 1986, SI 1986/1925, r 7.62(1) (rr 7.62, 7.63 added by SI 2002/1307). As to the European Regulation on Insolvency Proceedings (ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings) see para 46 et seq ante. The application must be in writing and verified by affidavit by the liquidator in the form set out in the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 7.20, and must state: (1) the name of the applicant (r 7.62(2)(a) (as so added)); (2) the name of the company and its registered number (r 7.62(b) (as so added)); (3) the date on which the resolution for voluntary winding up was passed (r 7.62(c) (as so added)); (4) that the application is accompanied by all of the requisite documents which are true copies of the documents required (r 7.62(d) (as so added)); and (5) that the European Regulation on Insolvency Proceedings will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings (r 7.62(e) (as so added)). For the meaning of 'main proceedings' see para 960 note 16 post. For the meanings of 'secondary proceedings' and 'territorial proceedings' see para 668 note 17 ante. The requisite documents which must accompany the application comprise: (a) a copy of the resolution for voluntary winding up referred to in the Insolvency Act 1986 s 84(3) (see para 371 ante) (Insolvency Rules 1986, SI 1986/1925, r 7.62(3)(a) (as so added)); (b) evidence of his appointment as liquidator of the company (r 7.62(3)(b) (as so added)); and (c) a copy of the statement of affairs required under the Insolvency Act 1986 s 99 (see para 947 post) (Insolvency Rules 1986, SI 1986/1925, r 7.62(3)(c) (as so added)). It is not necessary to serve the application on, or give notice to, any person: r 7.62(4) (as so added)).

9 *Ibid* r 7.62(5) (as added: see note 8 supra). If the court confirms the creditors' voluntary winding up, it may do so without a hearing and must affix its seal to the application: r 7.62(6) (as so added). A member of the court staff may deal with an application for confirmation: r 7.62(7) (as so added).

10 *Ibid* r 7.62(8) (r 7.62 as added (see note 8 supra); and r 7.62(8) added by SI 2003/1730). A company moves from administration to a voluntary liquidation under the Insolvency Act 1986 Sch B1 para 83 (as added) (see para 370 ante).

11 For the meaning of 'member state liquidator' see para 460 note 15 ante.

12 Insolvency Rules 1986, SI 1986/1925, r 7.63(a) (as added: see note 8 supra).

13 *Ie* under the European Regulation on Insolvency Proceedings art 40 (see para 54 ante).

14 Insolvency Rules 1986, SI 1986/1925, r 7.63(b) (as added: see note 8 supra).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

944 Procedure on resolution for winding up and applications for confirmation

TEXT AND NOTE 10--SI 1986/1925 r 7.62(8) amended: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(3) MEETINGS OF CREDITORS; STATEMENT OF AFFAIRS/945. Summoning and business at first meeting of creditors.

(3) MEETINGS OF CREDITORS; STATEMENT OF AFFAIRS

945. Summoning and business at first meeting of creditors.

In a creditors' voluntary winding up, the company must:

- 1310 (1) cause a meeting of its creditors to be summoned for a day not later than the fourteenth day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed¹;
- 1311 (2) cause the notices of the creditors' meeting to be sent by post to the creditors not less than seven days before the day on which the meeting is to be held; and
- 1312 (3) cause notice of the creditors' meeting to be advertised once in the Gazette² and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period³.

The notice of the creditors' meeting must state either the name and address of a person qualified to act as an insolvency practitioner⁴ in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require⁵, or a place in the relevant locality where, on the two business days⁶ falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge⁷.

If the company without reasonable excuse fails to comply with these provisions, it is guilty of an offence and is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum⁸.

Where a meeting of creditors is summoned under these provisions or is a meeting of creditors summoned by the liquidator where, in what starts as a members' voluntary winding up, he forms the opinion that the company will be unable to pay its debts⁹, the notice summoning the meeting must specify a venue¹⁰ for the meeting and the time, being not earlier than 12.00 hours on the business day before the day fixed for the meeting, by which, and the place at which, creditors must lodge any proxies necessary to entitle them to vote at the meeting¹¹. Where the company is an authorised deposit-taker or a former authorised deposit-taker¹², additional notices are required¹³. The only resolutions which may be passed at such meetings are those which may be passed at the first meeting of creditors in a winding up by the court¹⁴.

Where a company meeting at which a resolution for voluntary winding up is to be proposed¹⁵ is adjourned, any resolution passed at the first meeting of creditors¹⁶ held before the holding of the adjourned company meeting only has effect on and from the passing by the company of a resolution for winding up¹⁷.

¹ In the case of a winding up in relation to a limited liability partnership, the partnership is instead required to cause a meeting of its creditors to be summoned for a day not later than the fourteenth day after the day on which the partnership determines that it be wound up voluntarily: see the Insolvency Act 1986 s 98(1)(a); the

Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 For the meaning of 'the Gazette' see para 160 note 3 ante.

3 Insolvency Act 1986 s 98(1)(a)-(c). 'The relevant period' means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily (s 98(5)), except in the case of a winding up in relation to a limited liability partnership, where it means the period of six months immediately preceding the day on which the partnership determined that it be wound up voluntarily (s 98(5); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3)). Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by the provision referred to in the Insolvency Act 1986 s 98(1)(c) (see head (3) in the text) and in s 98(2)(b) (see the text to note 7 infra) apply separately in relation to those localities: s 98(3). Where the company had no place of business in Great Britain during the relevant period, references in s 98(1)(c) and in s 98(2)(b) to the company's principal place of business in Great Britain are to be read as references to the company's registered office: s 98(4). For the meaning of 'Great Britain' see para 12 note 2 ante.

Where a creditors' meeting is summoned under s 98 by the liquidator, the same notice of the meeting must be given to the Financial Services Authority and the scheme manager established under the Financial Services and Markets Act s 212(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 583) as is given to creditors where the company is an authorised institution or former authorised institution within the meaning of the Banking Act 1987: Insolvency Rules 1986, SI 1986/1925, r 4.72(4) (amended by SI 1998/1129, SI 2001/3649). See further para 671 ante. For the meaning of 'authorised institution' and 'former authorised institution' see para 460 notes 18, 19 ante. As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

As to the effect of notice of the summoning of a meeting under the Insolvency Act 1986 s 98 for the purposes of the mutual credit and set-off provisions see para 792 ante. This meeting of creditors is entitled to nominate a liquidator (see para 951 post) and appoint a liquidation committee (see para 994 post): see s 100 (as amended), s 101; and paras 953, 994 post. See also para 942 ante.

4 As to insolvency practitioners and their qualification see para 8 et seq ante.

5 Insolvency Act 1986 s 98(2)(a).

6 For the meaning of 'business day' see para 228 note 4 ante.

7 Insolvency Act 1986 s 98(2)(b).

8 Ibid ss 98(6), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante. As to the duty of a liquidator who has been nominated by the company to attend the first meeting of creditors and to report a default by the company in complying with its statutory obligations see para 961 post. As to offences by bodies corporate see s 432; and para 928 ante. As to the validity of resolutions passed at the company meeting at which the resolution for voluntary winding up is to be proposed where these obligations are not complied with see para 953 note 4 post.

9 *Ie* under *ibid* s 95: see para 942 ante.

10 For the meaning of 'venue' see para 91 note 7 ante.

11 Insolvency Rules 1986 r 4.51(1), (2) (amended by SI 1987/1919).

12 *Ie* within the meaning of the Insolvency Rules 1986, SI 1986/1925, r 13.12A (as added): see para 460 notes 18, 19 ante.

13 *Ibid* r 4.51(3) (amended by SI 2001/3649). The additional notices required are those specified in the Insolvency Rules 1986, SI 1986/1925, r 4.72 (as amended): see para 671 ante.

14 *Ibid* r 4.53. As to the resolutions which may be passed at the first meeting of creditors in a winding up by the court see r 4.52; and para 533 ante. However, r 4.52(1)(e) (see para 533 head (5) ante) does not apply to the first meeting in a voluntary winding up referred to in the text: r 4.53. As to the appointment of a liquidator see further para 950 et seq post; and as to the liquidator's remuneration see para 973 et seq post. As to resolutions passed at adjourned meetings see para 665 ante.

15 See para 944 ante.

16 *Ie* the meeting of creditors held under the Insolvency Act 1986 s 98.

17 Insolvency Rules 1986, SI 1986/1925, r 4.53A (added by SI 1987/1919).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

945 Summoning and business at first meeting of creditors

TEXT AND NOTES 1-3--In the case of the winding up of a company registered in England and Wales, in head (3) for 'once at least ... relevant period' read 'may cause notice of the meeting to be advertised in such other manner as the directors think fit': Insolvency Act 1986 s 98(1A) (added by SI 2009/864). Insolvency Act 1986 s 98(1) amended by SI 2009/864 so that it applies only to the winding up of a company registered in Scotland.

TEXT AND NOTE 10--After 'Summoning the meeting' read 'state the name of the company and the registered number of the company, and': SI 1986/1925 r 4.51(2) (amended by SI 2005/527).

TEXT AND NOTES 14-17--See SI 1986/1925 r 4.53D (CVL additional contents of notices gazetted or advertised under s 98) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(3) MEETINGS OF CREDITORS; STATEMENT OF AFFAIRS/946. Expenses of first meeting of creditors called by the company.

946. Expenses of first meeting of creditors called by the company.

Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses incurred in connection with the summoning, advertisement and holding of the first meeting of creditors called by the company¹; and any such payment is an expense of the liquidation². Where such payments are made before the commencement of the winding up, the director presiding at the first meeting of creditors must inform the meeting of their amount and the identity of the persons to whom they were made³.

The liquidator⁴ may make such a payment, but, if there is a liquidation committee⁵, he must give the committee at least seven days' notice of his intention to make the payment⁶; and such a payment may not be made by the liquidator to himself, or to any associate⁷ of his, otherwise than with the approval of the liquidation committee, the creditors, or the court⁸.

1 Ie the meeting of creditors called under the Insolvency Act 1986 s 98: see para 945 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.62(1). As to the prescribed order of priority of payment of the expenses of the liquidation see para 810 et seq ante. The provisions contained in r 4.62 are without prejudice to the powers of the court under r 4.219 (voluntary winding up superseded by winding up by the court: see para 811 ante): r 4.62(5).

3 Ibid r 4.62(2). See also note 2 supra. As to the appointment of a director to preside at such meetings see para 947 post.

4 Ie the liquidator appointed under the Insolvency Act 1986 s 100 (as amended): see para 953 post.

5 See para 994 post.

6 Insolvency Rules 1986, SI 1986/1925, r 4.62(3). See also note 2 supra.

7 For the meaning of 'associate' see para 5 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 4.62(4). See also note 2 supra.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

946 Expenses of first meeting of creditors called by the company

TEXT AND NOTES 1, 2--SI 1986/1925 r 4.62(1) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(3) MEETINGS OF CREDITORS; STATEMENT OF AFFAIRS/947. Statement of affairs and director's duty to preside.

947. Statement of affairs and director's duty to preside.

The directors of a company¹ must make out a statement in the prescribed form² as to the affairs of the company, cause that statement to be laid before the first meeting of creditors³, and appoint one of their number to preside at that meeting; and it is the duty of the director⁴ so appointed to attend the meeting and preside over it⁵.

The statement as to the affairs of the company must be verified by affidavit by some or all of the directors⁶ of the company and must show particulars of the company's assets, debts and liabilities, the names and addresses of the company's creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed⁷. Such statement of affairs may be made up to a date not more than 14 days before that on which the resolution for voluntary winding up is passed by the company⁸.

If the directors⁹ without reasonable excuse fail to comply with these provisions, or any director appointed to preside at the creditors' meeting fails to attend and preside at such meeting, they are or, as the case may be, the director is, guilty of an offence and liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum¹⁰.

The statement of affairs must be delivered by the directors to the liquidator in office following the first meeting of creditors forthwith after that meeting has been held; and he must within seven days deliver it to the registrar of companies¹¹. Where a liquidator is nominated by the company at a general meeting held on a day prior to that on which the first creditors' meeting is held, the directors must forthwith after his nomination or the making of the statement of affairs, whichever is the later, deliver to him a copy of the statement of affairs¹². At any first meeting of creditors where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company must cause to be made to the meeting, either by the director presiding at the meeting or by another person with knowledge of the relevant matters, a report, written or oral, on any material transactions relating to the company occurring between the date of the making of the statement of affairs and that of the meeting¹³.

Where the liquidator makes out a statement of affairs as is required in the case where, in what starts as a members' voluntary winding up, he forms the opinion that the company will be unable to pay its debts¹⁴, he must deliver such statement of affairs to the registrar of companies within seven days after the creditors' meeting which he is required to summon¹⁵.

1 Or, in the case of a winding up in relation to a limited liability partnership, the designated members: see the Insolvency Act 1986 s 99(1)-(3); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'designated member' see para 109 note 3 ante.

2 As to the prescribed form of the statement see the Insolvency Rules 1986, SI 1986/1925, rr 4.34, 12.7, Sch 4 Form 4.19.

3 Ie the creditors' meeting held under the Insolvency Act 1986 s 98: see para 945 ante.

4 Or designated member: see note 1 supra.

5 Insolvency Act 1986 s 99(1).

6 Or designated members: see note 1 supra.

7 Insolvency Act 1986 s 99(2). See also note 2 supra.

8 Insolvency Rules 1986, SI 1986/1925, r 4.34(4) (added by SI 1987/1919).

9 Or designated members: see note 1 supra.

10 Insolvency Act 1986 ss 99(3), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante. As to the duty of a liquidator nominated by the company to attend the first meeting of creditors and to report a default by the directors see para 961 post. Where the director nominated to preside at a creditors' meeting does not attend, those directors who are present may nominate one of themselves to preside: *Re Salcombe Hotel Development Co Ltd* [1991] BCLC 44, 5 BCC 807.

11 Insolvency Rules 1986, SI 1986/1925, r 4.34(1), (3) (substituted by SI 1987/1919). As to the prescribed form of the statement of affairs to be delivered to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, rr 4.34, 12.7, Sch 4 Form 4.20. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the duty of directors, among others, to submit accounts to the liquidator at the latter's request see para 965 post.

12 Ibid r 4.34A (added by SI 1987/1919).

13 Insolvency Rules 1986, SI 1986/1925, r 4.53B(1) (added by SI 1987/1919). Any such report must be recorded in the minutes of the meeting kept under the Insolvency Rules 1986, SI 1986/1925, r 4.71 (see paras 670 ante, 949 post): r 4.53B(2) (added by SI 1987/1919).

14 Ie under the Insolvency Act 1986 s 95(3): see para 942 ante. As to the prescribed form of the statement of affairs see the Insolvency Rules 1986, SI 1986/1925, rr 4.34, 12.7, Sch 4 Form 4.18.

15 Insolvency Rules 1986, SI 1986/1925, r 4.34(1), (2). As to the prescribed form of the statement of affairs to be delivered to the registrar of companies see rr 4.34, 12.7, Sch 4 Form 4.20. As to the liquidator's duties referred to in the text see para 942 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

947 Statement of affairs and director's duty to preside

NOTE 2--SI 1986/1925 Sch 4 Form 4.19 substituted: SI 2005/527.

NOTE 8--SI 1986/1925 r 4.34(5)-(7) added: SI 2010/686.

NOTE 14--SI 1986/1925 Sch 4 Form 4.18 substituted: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(3) MEETINGS OF CREDITORS; STATEMENT OF AFFAIRS/948. Expenses of statement of affairs.

948. Expenses of statement of affairs.

Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses of the preparation of the statement of affairs by the directors¹; and any such payment is an expense of the liquidation². Where such a payment is made before the commencement of the winding up, the director presiding at the first meeting of creditors³ must inform the meeting of the amount of the payment and the identity of the person to whom it was made⁴.

The liquidator⁵ may make a payment, but, if there is a liquidation committee⁶, he must give the committee at least seven days' notice of his intention to make it⁷; and such a payment may not be made by the liquidator to himself, or to any associate⁸ of his, otherwise than with the approval of the liquidation committee, the creditors, or the court⁹.

1 Ie under the Insolvency Act 1986 s 99: see para 947 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.38(1). As to the prescribed order of priority of payment of the expenses of the liquidation see para 810 et seq ante. The provisions contained in r 4.38 are without prejudice to the powers of the court under r 4.219 (voluntary winding up superseded by winding up by the court: see para 811 ante): r 4.38(5).

3 Ie the creditors' meeting held under the Insolvency Act 1986 s 98: see para 945 ante. As to the appointment of a director to preside at such a meeting see para 947 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 4.38(2). See also note 2 supra.

5 Ie the liquidator appointed under the Insolvency Act 1986 s 100 (as amended): see para 953 post.

6 See para 994 post.

7 Insolvency Rules 1986, SI 1986/1925, r 4.38(3). See also note 2 supra.

8 For the meaning of 'associate' see para 5 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 4.38(4). See also note 2 supra.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(3) MEETINGS OF CREDITORS; STATEMENT OF AFFAIRS/949. Rules as to meetings.

949. Rules as to meetings.

With certain exceptions and additions, the provisions relating to meetings in a winding up by the court apply to meetings of creditors and contributories convened in a creditors' voluntary winding up¹. The rules relating to proxies and company representation in relation to a winding up by the court also apply in relation to such meetings².

¹ As to these provisions see paras 650-656, 664-671 ante. The provisions there set out apply in a creditors' voluntary winding up with the following exceptions and additions.

The Insolvency Rules 1986, SI 1986/1925, r 4.50 (summoning first meetings: see para 532 ante) does not apply. As to the first meeting of creditors in a voluntary winding up see paras 942, 945 ante; and as to the passing of a resolution for voluntary winding up see paras 943-944 ante.

The Insolvency Act 1986 s 168(2) (duty of liquidator to summon meetings: see para 652 ante) does not apply; there is no duty to convene meetings of creditors or contributories upon being requisitioned to do so. Section 168(2) applies only to a winding up by the court: s 168(1). The power of the liquidator or official receiver to call meetings under the Insolvency Rules 1986, SI 1986/1925, r 4.54(1) (see para 652 ante) is conferred only in a voluntary winding up under r 4.54(1): see para 970 post. As to the power to requisition meetings in a voluntary winding up see para 985 post. As to the official receiver see para 503 et seq ante.

Rule 4.54 (general power to call and mode of summoning meetings: see para 653 ante) applies with the exception of r 4.54(4) (form of notice convening the meeting: see para 653 ante). In a creditors' voluntary winding up, the notice must specify a time and date, not more than four days before that fixed for the meeting, by which, and the place at which, creditors, if not individuals attending in person, must lodge proxies in order to be entitled to vote at the meeting: r 4.54(5).

Rule 4.55 (chairman at meetings: see para 654 ante) does not apply. In a creditors' voluntary winding up, at a meeting of creditors, except a meeting under the Insolvency Act 1986 s 95 (see para 942 ante) or s 98 (see para 945 ante), or a meeting of contributories, the liquidator or a person nominated by him in writing to act, must be chairman of the meeting: Insolvency Rules 1986, SI 1986/1925, r 4.56(1) (amended by SI 1987/1919). A person so nominated must be either one who is qualified to act as an insolvency practitioner in relation to the company (see para 8 et seq ante) or an employee of the liquidator or his firm who is experienced in insolvency matters: Insolvency Rules 1986, SI 1986/1925, r 4.56(2).

Rule 4.57 (requisitioned meetings: see para 652 ante) applies with the exception of r 4.57(4) (see para 652 ante). As to the power to requisition meetings in a voluntary winding up see para 985 post.

Rule 4.63 (amended by SI 1987/1919) (resolutions: see para 664 ante) applies with the exception of the Insolvency Rules 1986, SI 1986/1925, r 4.63(2A) (added by SI 1987/1919) (see para 664 note 2 ante).

The Insolvency Rules 1986, SI 1986/1925, r 4.67 (as amended) (entitlement of creditors and contributories to vote: see para 668 ante) applies. However, at a creditors' meeting, the chairman may allow a creditor to vote, notwithstanding that he has failed to comply with r 4.67(1)(a) (see para 668 head (1) ante), if satisfied that the failure was due to circumstances beyond the creditor's control: r 4.68.

Rule 4.70 (admission and rejection of proofs: see para 669 ante) applies with the exception of r 4.70(5) (see para 669 ante). In a creditors' voluntary winding up, the liquidator or his nominee as chairman is not personally liable for costs incurred by any person in respect of an application under r 4.70 unless the court makes an order to that effect: r 4.70(6).

Rule 4.71 (record of proceedings: see para 670 ante) applies with the exception of r 4.71(4) (see para 670 ante).

² As to these rules see paras 657-663 ante. The only difference is the prescribed form of proxy. For the prescribed form of proxy in a voluntary winding up see *ibid* rr 8.1, 12.7, Sch 4 Form 8.5. Cf para 657 note 2 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

949 Rules as to meetings

NOTE 1--SI 1986/1925 r 4.54(5) substituted by r 4.54(5-CVL): SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/950. Liquidator to be a qualified insolvency practitioner.

(4) LIQUIDATORS

(i) Appointment of Liquidator

950. Liquidator to be a qualified insolvency practitioner.

Where a company goes into voluntary liquidation, the liquidator must be a person who is qualified to act as an insolvency practitioner in relation to the company¹.

¹ Insolvency Act 1986 s 230(3). As to insolvency practitioners and their qualification see para 8 et seq ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/951. Appointment of liquidator in a members' voluntary winding up.

951. Appointment of liquidator in a members' voluntary winding up.

In a members' voluntary winding up, the company in general meeting must appoint one or more liquidators for the purpose of winding up its affairs and distributing its assets¹. Unless and until an effective resolution to wind up voluntarily has been passed, the company cannot appoint a liquidator², but a liquidator may be appointed at the same general meeting at which the resolution to wind up is passed; it is not necessary that the notice should expressly refer to the appointment of a liquidator³. The notice usually states that a certain person will be proposed at the meeting for the office of liquidator. If the resolution to appoint the person so named is not carried, the meeting may appoint another person⁴. When there is doubt as to the validity of an appointment purported to be made at a meeting, the court will usually appoint the person whom the meeting intended to appoint⁵.

1 Insolvency Act 1986 s 91(1). As to the position where no liquidator is nominated see para 955 post. Where a limited liability partnership is being wound up, there is no requirement that such an appointment be made 'in general meeting' (see s 91(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post), and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) (see para 980 post) apply for those purposes as they apply for the purposes of s 92 (s 91(3); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3). For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 *Re Indian Zoedone Co* (1884) 26 ChD 70, CA; *Re London and Australian Agency Corpn Ltd* (1873) 29 LT 417; *Re Petersburg and Viborg Gas Co, ex p Hartmont* (1875) 33 LT 637. These cases were decided before the enactment of the Companies Act 1929, at a time when a special resolution required two meetings, and it was held that a resolution that a certain person should be liquidator, passed at the first meeting where a special resolution was passed, was inoperative until confirmed at the subsequent meeting.

3 *Re Welsh Flannel and Tweed Co* (1875) LR 20 Eq 360, not following *Re Stearic Acid Co Ltd* (1863) 32 LJ Ch 784; and see *Oakes v Turquand and Harding*, *Peck v Turquand and Harding*, *Re Overend, Gurney & Co* (1867) LR 2 HL 325 at 355.

4 *Re Trench Tubeless Tyre Co, Bethell v Trench Tubeless Tyre Co* [1900] 1 Ch 408 at 410, CA.

5 *Re Indian Zoedone Co* (1884) 26 ChD 70, CA.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/952. Certificate of appointment; members' voluntary winding up.

952. Certificate of appointment; members' voluntary winding up.

Where, in a members' voluntary winding up, the liquidator is appointed by a meeting of the company¹, the chairman of the meeting must certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified to be the liquidator, and that he consents so to act². The chairman must send the certificate forthwith to the liquidator, who must keep it as part of the records of the liquidation³.

Not later than 28 days from his appointment, the liquidator must give notice of his appointment to all creditors of the company of whom he is aware in that period⁴.

1 See para 951 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.139(1), (2). As to insolvency practitioners and their qualification see para 8 et seq ante. As to the prescribed forms of certificate of appointment of a liquidator or of two or more liquidators see rr 4.139, 12.7, Sch 4 Forms 4.27, 4.28. As to authentication of a liquidator's appointment by means of the certificate see para 983 post.

3 Ibid r 4.139(1), (3). As to the records to be kept by the liquidator see para 975 et seq post.

4 Ibid r 4.139(1), (4). As the giving of notices see para 1089 post. As to the liquidator's duties on appointment see further para 957 et seq post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/953. Appointment of liquidator in a creditors' voluntary winding up.

953. Appointment of liquidator in a creditors' voluntary winding up.

In a creditors' voluntary winding up, the creditors and the company at their respective meetings¹ may nominate² a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets³. If the creditors and the company nominate different persons, the person nominated by the creditors is to be the liquidator; and, if no person is nominated by the creditors, the person, if any, nominated by the company is to be the liquidator⁴. However, in the case of different persons being nominated by the creditors and by the company, any director⁵, member⁶ or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person nominated by the creditors⁷. The court must grant such an application made by the holder of a qualifying floating charge in respect of the company's property⁸ unless the court thinks it right to refuse the application because of the particular circumstances of the case⁹.

1 As to the creditors' meeting see the Insolvency Act 1986 s 98; and para 945 ante. As to the meeting of the company see para 944 ante. In the case of a winding up in relation to a limited liability partnership, this is a reference to the creditors at their meeting mentioned in s 98 and the limited liability partnership: see s 100(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 As to the passing of resolutions for the appointment of a liquidator at the creditors' meeting see para 664 ante.

3 Insolvency Act 1986 s 100(1).

4 Ibid s 100(2). This provision forms part of the general scheme of the Insolvency Act 1986 by which creditors, in the case of insolvent companies, are enabled to control the voluntary winding up: see para 940 note 1 ante. Under the Companies Act 1948 ss 293, 294 (repealed), if no meeting of the creditors was held, the person nominated by the company was the liquidator until something was done about the matter by the creditors: *Re Centrebind Ltd* [1966] 3 All ER 889, [1967] 1 WLR 377. Before that some doubt existed as to the status of such a person (see eg *Re Ryder Installations Ltd* [1966] 1 All ER 453n, [1966] 1 WLR 524), and it was thought that, where, eg through an oversight, a meeting of creditors had not been held, an application should be made to the court for the confirmation of the appointment of a liquidator appointed by the company; orders have been made on such applications, subject to the creditors' approval of the liquidator so appointed, as expressed either by a meeting of the creditors or by notice in writing. It seems that, in view of the decision in *Re Centrebind Ltd* supra, such an application may not be necessary: cf *EV Saxton & Sons Ltd v R Miles (Confectioners) Ltd* [1983] 2 All ER 1025, [1983] 1 WLR 952. Where, however, a liquidator has been nominated by the company, his powers are substantially restricted until the creditors' meeting has been held: see the Insolvency Act 1986 s 166; and para 961 post.

By the Companies (Consolidation) Act 1908 s 188 (repealed), the liquidator appointed by the company had to convene a meeting of creditors within seven days after his appointment. At that meeting the creditors could determine whether to apply to the court to appoint any other person as liquidator in the place of or jointly with the liquidator appointed by the company. The application had to be made within 14 days of the meeting by any creditor appointed for the purpose by the meeting, but, if the creditor failed by inadvertence to apply, the liquidator could apply with his consent: *Re Clyde Marine Insurance Co* 1921 SC 472, Ct of Sess. As to cases where the court ordered the appointment of the creditors' nominee as liquidator see *Re Karamelli and Barnett Ltd* [1917] 1 Ch 203; *Argylls Ltd v Ritchie and Whiteman* 1914 SC 915, Ct of Sess.

5 For the meaning of 'director' see para 5 note 2 ante. The reference to a director does not apply in the case of a winding up in relation to a limited liability partnership: see the Insolvency Act 1986 s 100(3); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

6 For the meaning of 'member' see para 72 note 9 ante.

7 Insolvency Act 1986 s 100(3). As to the procedure on appointment by the court see para 981 post.

8 le within the meaning of the Insolvency Act 1986 Sch B1 para 14 (as added): see para 228 et seq ante.

9 Ibid s 100(4) (added by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 14).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

953 Appointment of liquidator in a creditors' voluntary winding up

TEXT AND NOTES--See SI 1986/1925 r 4.101B (Official receiver not to be appointed liquidator) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/954. Certificate of appointment; creditors' voluntary winding up.

954. Certificate of appointment; creditors' voluntary winding up.

Where, in a creditors' voluntary winding up, a person is appointed as liquidator, either by a meeting of creditors or by a meeting of the company¹, the chairman of the meeting must certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified to be the liquidator², and that he consents so to act; and the liquidator's appointment takes effect upon the passing of the resolution for that appointment³. The chairman must send the certificate forthwith to the liquidator, who must keep it as part of the records of the liquidation⁴.

These provisions need not, however, be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting⁵.

1 As to the creditors' meeting see para 945 ante; as to the meeting of the company see para 944 ante; and as to the appointment of a liquidator at such meetings see para 953 ante.

2 As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 4.101(1), (2) (amended by SI 1987/1919). As to the prescribed forms of certificate of appointment of a liquidator or of two or more liquidators see the Insolvency Rules 1986, SI 1986/1925, rr 4.101, 12.7, Sch 4 Forms 4.27, 4.28. As to the authentication of a liquidator's appointment by means of the certificate see para 983 post.

4 Ibid r 4.101(3). As to the records to be kept by the liquidator see para 975 et seq post.

5 Ibid r 4.101(4).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/955. No liquidator appointed or nominated by company.

955. No liquidator appointed or nominated by company.

In the case of either a members' or creditors' voluntary winding up where no liquidator has been appointed or nominated by the company¹, the powers of the directors of the company may not be exercised, except with the sanction of the court or, in the case of a creditors' voluntary winding up, so far as may be necessary to secure compliance with the obligations to call a creditors' meeting² and to prepare a statement of affairs³ during the period before the appointment or nomination of a liquidator of the company⁴.

These provisions do not apply in relation to the powers of the directors of the company to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and to do all such other things as may be necessary for the protection of the company's assets⁵.

If the directors of the company without reasonable excuse fail to comply with these provisions, they are liable on summary conviction to a fine not exceeding the statutory maximum⁶.

1 See para 952 et seq ante.

2 Ie the obligations imposed by the Insolvency Act 1986 s 98: see para 945 ante.

3 Ie the obligations imposed by ibid s 99: see para 947 ante.

4 Ibid s 114(1), (2). In certain circumstances where the winding-up resolution is neither registered nor advertised a person dealing with the company may be able to contend that he dealt with the directors in good faith and without notice of any limitation on their authority and, therefore, the company should be bound by the transaction entered into by the directors: *Re a Company (No 006341 of 1992)*, *ex p B Ltd* [1994] 1 BCLC 225.

5 Insolvency Act 1986 s 114(3).

6 Ibid ss 114(4), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(i) Appointment of Liquidator/956. Corrupt inducement affecting appointment.

956. Corrupt inducement affecting appointment.

A person who gives, or agrees to give, to a member¹ or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the nomination of some person other than himself, as the company's liquidator is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum².

¹ For the meaning of 'member' see para 72 note 9 ante.

² Insolvency Act 1986 ss 164, 430, Sch 10. As to the statutory maximum see para 10 note 1 ante. As to the rule against solicitation, which also applies in a members' and creditors' voluntary winding up, see para 662 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/957. Filing notice of appointment.

(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions

957. Filing notice of appointment.

Within 14 days after his appointment¹, the liquidator must publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by the Secretary of State². If he fails to do so, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum³. Failure to gazette the notice of appointment will have the result that the company will not be entitled to rely against other persons upon the appointment having been made⁴.

The liquidator may also have to give notice of his appointment to all creditors of the company of whom he is aware.

In a creditors' voluntary winding up, where the liquidator is appointed by a meeting of creditors or contributories, or by a meeting of the company, he must, on receiving his certificate of appointment⁵, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories⁶. A liquidator need not comply with this provision if he is appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting⁷. The expenses of giving notice must be borne in the first instance by the liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the liquidation⁸.

¹ As to appointment in a members' voluntary winding up see para 951 ante; and as to appointment in a creditors' voluntary winding up see para 953 ante.

² Insolvency Act 1986 s 109(1). As to the prescribed forms of notice see the Companies (Forms) (Amendment) Regulations 1987, SI 1987/752, reg 5(3), Sch 2 Forms 600, 600a (amended by SI 1999/1820). For the meaning of 'the Gazette' see para 160 note 3 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the Secretary of State see para 11 note 10 ante.

³ Insolvency Act 1986 ss 109(2), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

⁴ See the Companies Act 1985 s 42(1)(a). See also COMPANIES vol 14 (2009) PARA 145.

⁵ See para 954 ante.

⁶ Insolvency Rules 1986, SI 1986/1925, r 4.106(1).

⁷ Ibid r 4.106(2).

⁸ Ibid r 4.106(3).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

957 Filing notice of appointment

TEXT AND NOTES--The registrar must, on receiving any notice under the 1986 Act s 109(1) in relation to a community interest company, provide a copy of that notice to the Regulator of Community Interest Companies: Community Interest Company Regulations 2005, SI 2005/1788, reg 35(1). As to community interest companies generally see COMPANIES vol 14 (2009) PARA 82 et seq). See SI 1986/1925 r 4.106A (appointment to be gazetted and registered) (added by SI 2010/686).

TEXT AND NOTE 4--1985 Act s 42(1) now Companies Act 2006 s 1079(1)-(3).

TEXT AND NOTES 5, 6--SI 1986/1925 r 4.106(1) substituted: SI 2009/642.

TEXT AND NOTE 8--SI 1986/1925 r 4.106(3) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/958. Information to creditors and contributories.

958. Information to creditors and contributories.

The liquidator must, within 28 days of the first meeting of creditors¹, send to creditors² and contributories of the company a copy or summary of the statement of affairs, and a report of the proceedings at the meeting³.

1 le held under the Insolvency Act 1986 s 95 (see para 942 ante) or s 98 (see para 945 ante).

2 For these purposes, 'creditors' means those creditors of the company who are known to the liquidator or, where a statement of the company's affairs has been submitted, are identified in the statement: Insolvency Rules 1986, SI 1986/1925, r 4.44.

3 Ibid r 4.49 (amended by SI 2003/1730). The report must also include to the best of the liquidator's knowledge and belief an estimate of the value of the prescribed part (whether or not he intends to make an application under the Insolvency Act 1986 s 176A(5) (as added) (see para 773 ante) or s 176A(3) (as added) applies (see para 773 ante)) and an estimate of the value of the company's net property, and whether, and if so, why, the liquidator proposes to make an application to court under s 176A(5) (as added): Insolvency Rules 1986, SI 1986/1925, r 4.49(2) (added by SI 2003/1730). Nothing in the Insolvency Rules 1986, SI 1986/1925, r 4.49 (as amended) is to be taken as requiring any estimate made under r 4.49(2) (as added) to include any information the disclosure of which could seriously prejudice the commercial interests of the company, and if such information is excluded from the calculation the estimate is to be accompanied by a statement to that effect: r.4.49(3) (added by SI 2003/1730).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

958 Information to creditors and contributories

TEXT AND NOTES--See SI 1986/1925 r 4.49C (CVL progress reports--voluntary winding up), r 4.49E (creditors' and members' request for further information) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/959. Liquidator's powers exercisable with sanction.

959. Liquidator's powers exercisable with sanction.

The liquidator may, in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company¹, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the liquidation committee² or, if there is no such committee, a meeting of the company's creditors, exercise any of the powers conferred on a liquidator in a winding up by the court of paying any classes of creditors in full, of making compromises or arrangements with creditors or persons claiming to be creditors, or having or alleging themselves to have claims against the company, and of compromising calls, liabilities to calls, debts, liabilities and claims against contributories or alleged contributories or other debtors³. In the case of a creditors' voluntary winding up, these powers are restricted where a liquidator has been nominated by the company and no meeting of creditors has been held⁴.

Where the liquidator in exercise of these powers disposes of any property⁵ of the company to a person who is connected with the company⁶, he must, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers⁷.

1 Or, in the case of a winding up in relation to a limited liability partnership, a determination by a meeting of the members of the partnership: see the Insolvency Act 1986 s 165(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. Before the enactment of the Companies Act 1929, the sanction required in every voluntary winding up was only an extraordinary resolution of the company: see the Companies (Consolidation) Act 1908 s 214 (repealed). In *Re Lama Coal Co, ex p Miller* (1867) 2 Ch App 692, it was held that, where a court had once had seisin of a claim, even though before it adjudicated on it the necessary sanction to a compromise had been obtained, the liquidator could not properly enter into the compromise without the sanction of the court.

2 As to the liquidation committee see para 994 post.

3 See the Insolvency Act 1986 s 165(1), (2), Sch 4 Pt I (paras 1-3A) (as amended). See also para 578 ante. Even if made without necessary sanction, a compromise by a liquidator with a creditor is valid and binding, at any rate on the liquidator, and probably on the company where the creditor was ignorant of the failure to comply with the formalities: *Cyclemakers' Co-operative Supply Co v Sims* [1903] 1 KB 477. As to the court's power to sanction arrangements and reconstructions see COMPANIES vol 15 (2009) PARA 1431 et seq.

4 See para 961 post.

5 For the meaning of 'property' see COMPANIES vol 15 (2009) PARA 1337.

6 For the meaning of 'connected' with a company see para 5 ante.

7 Insolvency Act 1986 s 165(1), (6). This applies to any powers exercised by the liquidator under s 165(1), (6). As to the court's power to set aside transactions entered into by the liquidator with an associate of his see the Insolvency Rules 1986, SI 1986/1925, r 4.149; and para 567 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/960. Liquidator's powers exercisable without sanction.

960. Liquidator's powers exercisable without sanction.

The liquidator may, without sanction, exercise any of the other powers given to the liquidator in a winding up by the court¹, such as the power of bringing or defending a claim or other legal proceeding in the name of the company² or of carrying on its business so far as may be necessary for its beneficial winding up³ or of selling its property⁴. Generally he is to be regarded as the governing body of the company⁵.

The liquidator may exercise the court's powers of settling a list of contributories⁶ and of making calls⁷.

In a members' voluntary winding up, the liquidator has power to sanction the continuance of the directors' powers, which would otherwise cease on his appointment⁸.

Where the liquidator in exercise of these powers disposes of any property of the company to a person who is connected with the company⁹, he must, if there is for the time being a liquidation committee¹⁰, give notice to the committee of that exercise of his powers¹¹.

1 See the Insolvency Act 1986 s 165(1), (3), Sch 4 Pts II, III (paras 4-13). As to the powers which may be exercised by the liquidator in a winding up by the court see paras 577-578 ante. An agreement for the sale of the company's property is *intra vires*: *Re Bank of South Australia (No 2)* [1895] 1 Ch 578, CA.

2 See the Insolvency Act 1986 Sch 4 Pt II para 4; and para 578 ante. In such a case, the rights of a successful litigant in respect of costs are the same as he would have in a winding up by the court: see *Re Pacific Coast Syndicate Ltd* [1913] 2 Ch 26; and para 594 ante.

3 See the Insolvency Act 1986 Sch 4 Pt II para 5; and para 578 ante. As to the exercise of this power see *Re Great Eastern Electric Co Ltd* [1941] Ch 241, [1941] 1 All ER 409; and para 747 ante.

4 See the Insolvency Act 1986 Sch 4 Pt III para 6; and paras 577, 744 ante. In certain circumstances, the liquidator may be empowered to accept shares etc as consideration for the sale: see COMPANIES vol 15 (2009) PARA 1437 et seq.

5 *Hillman v Crystal Bowl Amusements Ltd* [1973] 1 All ER 379, [1973] 1 WLR 162, CA.

6 Insolvency Act 1986 s 165(4)(a). The list so settled is *prima facie* evidence of the liability of the persons named in it to be contributories: s 165(4)(a).

7 *Ibid* s 165(4)(b). Notice of the settlement of the list of contributories is usual, but not necessary, and absence of notice is no defence to an action for calls: *Brighton Arcade Co v Dowling* (1868) LR 3 CP 175 at 187; cf *Re London Bank of Scotland* [1867] WN 114. Fully paid shareholders are 'contributories' in a voluntary winding up: *Re Anglesea Colliery Co* (1866) 1 Ch App 555; and see para 703 ante. A call made to adjust the rights of contributories among themselves, after all debts are provided for, is valid: *Re Anglesea Colliery Co* supra. See also the Insolvency Act 1986 s 150(1); and para 733 ante.

8 See *ibid* s 91(2); and para 997 post.

9 For the meaning of 'connected' with a company see para 5 ante.

10 As to the liquidation committee see para 994 post.

11 Insolvency Act 1986 s 165(6). This applies to any powers exercised by the liquidator under the Insolvency Act 1986: s 165(6). As to the court's power to set aside transactions entered into by the liquidator with an associate of his see the Insolvency Rules 1986, SI 1986/1925, r 4.149; and para 567 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/961. Liquidator nominated by company in creditors' voluntary winding up.

961. Liquidator nominated by company in creditors' voluntary winding up.

In the case of a creditors' voluntary winding up, where a liquidator has been nominated by the company, the powers conferred on the liquidator¹ may not be exercised, except with the sanction of the court, during the period before the holding of the first meeting of creditors².

This provision does not, however, apply in relation to the power of the liquidator to take into his custody or under his control all the property to which the company is or appears to be entitled, nor his power to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, nor his power to do all other things as may be necessary for the protection of the company's assets³.

Where a liquidator has been nominated by the company, he must attend the first meeting of creditors and must report to the meeting on any exercise by him of his powers⁴.

If default is made by the company in complying with its obligation to summon the first meeting of creditors⁵, or by the directors⁶ in complying with their obligations to prepare and lay the statement of affairs before the creditors⁷, the liquidator must, within seven days of the relevant day⁸, apply to the court for directions as to the manner in which that default is to be remedied⁹.

If the liquidator without reasonable excuse fails to comply with these provisions, he is liable on summary conviction to a fine not exceeding the statutory maximum¹⁰.

1 Ie the Insolvency Act 1986 s 165: see paras 959-960 ante, 967, 970 post.

2 Ibid s 166(1), (2). The first meeting of creditors is held under s 98: see para 945 ante.

3 Ibid s 166(3).

4 Ibid s 166(4). This applies to the exercise by him of his powers whether or not under s 112 (see para 1012 post), s 165 (see paras 959-960 ante) or s 166: s 166(1), (4).

5 Ie under ibid s 98(1) or (2): see para 945 ante.

6 Or, in the case of a winding up in relation to a limited liability partnership, the designated members: see ibid s 96; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. For the meaning of 'designated member' see para 109 note 3 ante.

7 Ie under the Insolvency Act 1986 s 99(1) or (2): see para 947 ante.

8 For these purposes, 'relevant day' means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later: ibid s 166(6).

9 Ibid s 166(5).

10 Ibid ss 166(7), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

961 Liquidator nominated by company in creditors' voluntary winding up

NOTE 5--Now also refers to a meeting of creditors under the Insolvency Act 1986 s 98(1A): s 166(5) (amended by SI 2009/864).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/962. Powers to get in the company's property; duty to co-operate with liquidator; inquiry into company's dealings; supplies of utilities.

962. Powers to get in the company's property; duty to co-operate with liquidator; inquiry into company's dealings; supplies of utilities.

The provisions which apply in a winding up by the court in relation to getting in the company's property¹ also apply to a voluntary winding up¹, save that the delegation to the liquidator of the powers of the court to enforce delivery of the company's property² does not apply in a voluntary winding up³.

The provisions in respect of:

- 1313 (1) the duties of certain persons to co-operate with the liquidator in a winding up by the court in relation to the giving of information concerning the company's affairs⁴;
- 1314 (2) the powers conferred on such a liquidator to apply to the court for the examination of certain persons⁵; and
- 1315 (3) the continuation of the supply of gas, electricity, water and communications services in a winding up by the court⁶,

also apply in a voluntary winding up.

1 See the Insolvency Act 1986 s 234 (as amended); and para 675 ante.

2 See under the Insolvency Rules 1986, SI 1986/1925, r 4.185: see para 675 ante.

3 Ibid rr 4.1(4), 4.185.

4 See the Insolvency Act 1986 s 235 (as amended); and para 678 ante.

5 See ibid ss 236, 237; and para 679 et seq ante.

6 See ibid s 233 (as amended); and para 583 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/963. Acceptance of shares etc as consideration for sale of company's property.

963. Acceptance of shares etc as consideration for sale of company's property.

In the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business is proposed to be transferred or sold to another company or to a limited liability partnership, the liquidator of the company may, with the requisite sanction, receive, in compensation or part compensation for the transfer or sale, in the case of a transfer to another company, shares, policies or other like interests in that other company, or, in the case of a limited liability partnership, membership for distribution among the members of the company proposed to be, or being, wound up¹.

¹ See the Insolvency Act 1986 s 110 (as amended), s 111; and COMPANIES vol 15 (2009) PARA 1438. For modifications in the case of a winding up in relation to a limited liability partnership see the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

963 Acceptance of shares etc as consideration for sale of company's property

TEXT AND NOTES--See SI 1986/1925 r 4.49F (arrangements under s 110 (acceptance of shares, etc, as consideration for sale of company property)) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/964. Adjustment of prior transactions.

964. Adjustment of prior transactions.

The provisions relating to the adjustment of prior transactions in a winding up by the court, such as transactions at an undervalue¹, preferences², extortionate credit transactions³, avoidance of certain floating charges⁴, and unenforceability of liens on books⁵ also apply in a voluntary winding up.

1 See the Insolvency Act 1986 s 238 (as amended); and para 844 et seq ante.

2 See ibid s 239; and para 846 et seq ante.

3 See ibid s 244 (as amended); and para 857 et seq ante.

4 See ibid s 245 (as amended); and para 861 et seq ante.

5 See ibid s 246 (as amended); and para 676 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/965. Submission of accounts.

965. Submission of accounts.

Certain persons¹ must, at the request of the liquidator, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify². The specified period for the accounts may begin from a date up to three years preceding the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared³. The accounts must, if the liquidator so requires, be verified by affidavit and, whether or not so verified, must be delivered to him, with the affidavit if required, within 21 days from the request that they be furnished, or such longer period as he may allow⁴.

1 Ie those specified in the Insolvency Act 1986 s 235(3): see para 678 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.40(1).

3 Ibid r 4.40(2).

4 Ibid r 4.40(3).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/966. Expenses of preparing accounts.

966. Expenses of preparing accounts.

Where a person is required to furnish accounts¹, the liquidator may, with the sanction of the liquidation committee², if there is one, and at the expense of the assets, employ some person or persons to assist in the preparation of the accounts³.

At the request of the person who is required to furnish accounts, the liquidator may, with that sanction, authorise an allowance, payable out of the assets, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts⁴.

Any such request must be accompanied by an estimate of the expenses involved; and the liquidator may only authorise the employment of a named person or a named firm, being in either case approved by him⁵.

1 le under the Insolvency Rules 1986, SI 1986/1925, r 4.40: see para 965 ante.

2 As to the liquidation committee see para 994 et seq post.

3 Insolvency Rules 1986, SI 1986, 1925, r 4.41(1).

4 Ibid r 4.41(2).

5 Ibid r 4.41(3). As to the prescribed order of priority of payment of such expenses see para 810 et seq ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

966 Expenses of preparing accounts

TEXT AND NOTES 1-3--SI 1986/1925 r 4.41(1) amended: SI 2008/737.

TEXT AND NOTE 4--SI 1986/1925 r 4.41(2) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/967. Liquidator's duties.

967. Liquidator's duties.

The liquidator must pay the company's debts and adjust the rights of the contributories among themselves¹. He is an officer of the company, and as such must pay out of the company's assets the stamp duty on any unfiled contract for the allotment of shares for a consideration other than cash².

¹ Insolvency Act 1986 s 165(5). As to the distribution of the company's property see para 1009 post.

² See the Companies Act 1985 s 88(2). See also COMPANIES vol 15 (2009) PARA 1108. See also *Re X Co Ltd* [1907] 2 Ch 92.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/968. Powers where several liquidators.

968. Powers where several liquidators.

Where the appointment or nomination of any person to the office of liquidator relates to more than one person, or has the effect that the office is to be held by more than one person, the appointment or nomination must declare whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of the persons for the time being holding the office in question¹.

¹ See the Insolvency Act 1986 s 231 (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 20, Sch 26). Under the Companies Act 1985 s 598(5) (repealed), where several liquidators were appointed, they could not delegate their powers generally to one of themselves, but they could delegate the execution of a particular document: *Re London and Mediterranean Bank, ex p Birmingham Banking Co* (1868) 3 Ch App 651; *Re London and Mediterranean Bank, ex p Agra and Masterman's Bank* (1871) 6 Ch App 206; *Re London and Mediterranean Bank Ltd, ex p London and South-Western Bank* (1867) 36 LJ Ch 807. When one liquidator died, the survivor could not act alone, and a new liquidator had to be appointed: *Re Metropolitan Bank and Jones* (1876) 2 ChD 366. As to the death of a liquidator see further para 980 post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/969. Validity of liquidator's acts.

969. Validity of liquidator's acts.

The acts of an individual as liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications¹.

¹ See the Insolvency Act 1986 s 232 (amended by the Enterprise Act 2002 ss 248(3), 278(2), Sch 17 paras 9, 21, Sch 26).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/970. Summoning meetings.

970. Summoning meetings.

The liquidator may summon general meetings of the company for the purpose of obtaining its sanction by special¹ or extraordinary² resolution, or for any other purpose he may think fit³.

In the event of the winding up continuing for more than one year, he must summon a general meeting of the company (in the case of a members' voluntary winding up)⁴, and a general meeting of the company and a meeting of the creditors (in the case of a creditors' voluntary winding up)⁵, at the end of the first year from the commencement of the winding up⁶, and of each succeeding year, or at the first convenient date within three months of the end of the year or such longer period as the Secretary of State may allow; and he must lay before each meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year⁷. If he fails to comply with these requirements, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum⁸.

Where a members' voluntary winding up has become a creditors' voluntary winding up⁹ and the first meeting of creditors¹⁰ is held three months or less before the end of the first year from the commencement of the winding up, the liquidator is not required to summon a meeting of creditors at the end of that year¹¹.

In a creditors' voluntary winding up, the liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up¹².

1 As to special resolutions see COMPANIES vol 14 (2009) PARA 614.

2 As to extraordinary resolutions see COMPANIES vol 14 (2009) PARA 615.

3 Insolvency Act 1986 s 165(4)(c). In the case of a winding up in relation to a limited liability partnership, the liquidator may summon meetings of the members of the partnership for the purpose of obtaining their sanction or for any other purpose he may think fit (see s 165(4)(c); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post), and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) (see para 980 post) apply for those purposes as they apply for the purposes of s 92 (see s 165(4A); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3). For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 As to the liquidator's duty where the liquidator is of opinion that the company will be unable to pay its debts see para 942 ante.

5 In the case of a winding up in relation to a limited liability partnership, the liquidator must summon meetings of the members of the partnership (see the Insolvency Act 1986 ss 93(1), 105(1); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3), and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) (see para 980 post) apply for those purposes as they apply for the purposes of s 92 (see ss 93(4), 105(5); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3).

6 As to when the winding up commences see para 996 post.

7 Insolvency Act 1986 ss 93(1), (2), 105(1), (2). As to the Secretary of State see para 11 note 10 ante.

8 Ibid ss 93(3), 105(3), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

9 Ie under ibid s 96: see para 942 ante.

10 Ie under ibid s 95: see para 942 ante.

11 Ibid s 105(4).

12 See the Insolvency Rules 1986, SI 1986/1925, r 4.51(1). As to the provisions relating to the procedure governing meetings of creditors and contributories in a creditors' voluntary winding up see para 949 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

970 Summoning meetings

TEXT AND NOTES 1, 2--For 'special or extraordinary resolution' read 'special resolution': 1986 Act s 165(4)(c) (amended by the Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/971. Special manager.

971. Special manager.

The provisions relating to special managers in a winding up by the court¹ apply in a voluntary winding up with certain exceptions and modifications².

¹ See the Insolvency Act 1986 s 177; the Insolvency Rules 1986, SI 1986/1925, rr 4.206-4.210; and para 498 et seq ante.

² Ibid r 4.1(1)(c), (2) (r 4.1(1) substituted and r 4.1(2) amended by SI 1987/1919). The exceptions and modifications in a voluntary winding up are as set out below.

The Insolvency Rules 1986, SI 1986/1925, r 4.206(2) (which provides that references in rr 4.206-4.210 to the liquidator are to be read as including the provisional liquidator: see para 498 ante) does not apply in a voluntary winding up.

Rule 4.207(5) (which provides that costs of providing security are to be paid in the first instance by the special manager and makes provision for him to be reimbursed: see para 500 ante) does not apply in a voluntary winding up.

Rule 4.210 (termination of special manager's appointment if the winding-up petition is dismissed or if, a provisional liquidator having been appointed, the latter is discharged without a winding-up order having been made: see para 502 ante) does not apply in a voluntary winding up.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(ii) Liquidator's Powers and Duties; Adjustment of Prior Transactions/972. Disclaimer.

972. Disclaimer.

The statutory power given to a liquidator in a winding up by the court to disclaim onerous property¹ applies in a voluntary winding up.

- 1 See the Insolvency Act 1986 ss 178-182; and para 866 et seq ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iii) Liquidator's Remuneration and Costs/973. Liquidator's remuneration.

(iii) Liquidator's Remuneration and Costs

973. Liquidator's remuneration.

In a members' voluntary winding up, the liquidator is entitled to receive remuneration for his services as such¹. Such remuneration must be fixed either:

- 1316 (1) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination; or
- 1317 (2) by reference to the time properly given by the insolvency practitioner, as liquidator, and his staff in attending to matters arising in the winding up,

and the company in general meeting must determine whether the remuneration is to be fixed under head (1) or head (2) above and, if under head (1) above, the percentage to be applied as there mentioned². If not fixed as described above, the liquidator is entitled to remuneration calculated in accordance with the following provisions³. The liquidator is entitled by way of remuneration for his services as such to such sum as may be arrived at by first applying the relevant realisation scale⁴ to the monies received by him from the realisation of the assets of the company including any value added tax thereon but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company, and then by adding to that sum such sum as is arrived at by applying the relevant distribution scale⁵ to the value of the assets distributed to creditors of the company (including payments made in respect of preferential debts⁶) and to contributories⁷.

The provisions dealing with other matters affecting the remuneration of a liquidator in a winding up by the court apply in relation to the remuneration of the liquidator in a members' voluntary winding up⁸. If the liquidator in a members' voluntary winding up considers that the remuneration fixed for him by the company in general meeting, or under the scale laid down for the official receiver, is insufficient, he may apply to the court for an order increasing its amount or rate⁹. The liquidator must, however, give at least 14 days' notice of such an application to the company's contributories, or such one or more of them as the court may direct; and the contributories may nominate one or more of their number to appear or be represented¹⁰. If it appears to be a proper case, the court may order the costs of the liquidator's application, including the costs of any contributory appearing or being represented on it, to be paid out of the assets¹¹.

In a creditors' voluntary winding up, the liquidator's remuneration is determined in the same manner as the remuneration of a liquidator in a winding up by the court¹².

1 Insolvent Rules 1986, SI 1986/1925, r 4.148A(1) (r 4.148A added by SI 1987/1919).

2 Insolvent Rules 1986, SI 1986/1925, r 4.148A(2) (as added: see note 1 supra). In arriving at such determination, the company in general meeting must have regard to the matters set out in r 4.127(4) (see para 589 ante): r 4.148A(3) (as so added).

3 Ibid r 4.148A(4) (as added (see note 1 supra); and substituted by SI 2004/584). Transitional provisions provide that if a winding up order is made or a resolution for the winding up of the company is passed prior to 1

April 2004 and the liquidator is entitled to remuneration by virtue of the original Insolvency Rules 1986, SI 1986/1925, r 4.127(6), r 4.128(1) or r 4.148A(4) (as added), the liquidator is to continue to be entitled to remuneration on the basis that (1) the amendments made to the Insolvency Rules 1986, SI 1986/1925 (as amended) by the Insolvency (Amendment) Rules 2004, SI 2004/584, do not apply; and (2) the amendments made to the Insolvency Regulations 1994, SI 1994/2507, by the Insolvency (Amendment) Regulations 2004, 2004/584, had not been made: see r 3.

4 Ie the realisation scale set out in the Insolvency Rules 1986, SI 1986/1925, r 4.148B, Sch 6 (as amended). The realisation scale is: (1) on the first £5,000 or fractions thereof, 20%; (2) on the next £5,000 or fraction thereof, 15%; (3) on the next £90,000 or fraction thereof, 10%; and (4) on all further sums realised, 5%: Sch 6 (added by SI 2004/584).

5 Ie the distribution scale set out in the Insolvency Rules 1986, SI 1986/1925, Sch 6 (as amended). The realisation scale is: (1) on the first £5,000 or fractions thereof, 10%; (2) on the next £5,000 or fraction thereof, 7.5%; (3) on the next £90,000 or fraction thereof, 5%; and (4) on all further sums realised, 2.5%: Sch 6 (as added: see note 4 supra).

6 See para 763 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 4.148B (as added: see note 1 supra). This is subject to the transitional provisions as set out in note 3 supra.

8 Ibid r 4.148A(5) (as added: see note 1 supra). The provisions referred to in the text are those contained in r 4.128 (as amended) (see para 590 ante); and, for these purposes, references in those provisions to 'the liquidation committee' and 'a meeting of creditors' are to be read as references to the company in general meeting: r 4.148A(5) (as so added).

9 Ibid r 4.148A(6) (as added: see note 1 supra). In respect of any such application issued after 1 October 2004, *Practice Statement--The Fixing and Approval of Remuneration of Appointees* (2004) will apply: see *Practice Statement--The Fixing and Approval of Remuneration of Appointees* para 2.1(2); and para 591 note 5 ante.

10 Insolvency Rules 1986, SI 1986/1925, r 4.148A(7) (as added: see note 1 supra). As to the making of applications see para 1055 et seq post.

11 Ibid r 4.148A(8) (as added: see note 1 supra).

12 See para 589 et seq ante. As to the prescribed order of priority of payment of a voluntary liquidator's remuneration where a winding up by the court follows immediately upon a voluntary winding up see para 811 ante. Under the Companies Act 1985 s 536 (repealed) and the Companies (Winding-up) Rules 1949, SI 1949/330 (revoked), where the resolution for winding up was set aside as invalid and the company was afterwards ordered to be wound up, the liquidator was not entitled to be paid anything for his services as such, either by virtue of the Companies Act 1985 or on a quantum meruit; he was, however, entitled to reasonable remuneration as regards any work done by him which had been useful to the company for business purposes unconnected with the voluntary liquidation, or which had been used by the official receiver and liquidator with full knowledge of the facts: *Re Allison, Johnson and Foster Ltd, ex p Birkenshaw* [1904] 2 KB 327.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

973 Liquidator's remuneration

TEXT AND NOTES--SI 1986/1925 r 4.148A amended: SI 2010/686. See SI 1986/1925 r 4.148C (members' claim that remuneration is excessive), r 4.148D (remuneration of new liquidator), r 4.148E (apportionment of fixed fee remuneration) (added by SI 2010/686).

TEXT AND NOTES 4-7--SI 1986/1925 r 4.148B revoked: SI 2010/686.

TEXT AND NOTE 8--The provisions referred to are those contained in SI 1986/1925 rr 4.128 and 4.127B (see PARA 590): r 4.148A(5) (amended by SI 2005/527).

TEXT AND NOTE 11--SI 1986/1925 r 148A(8) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iii) Liquidator's Remuneration and Costs/974. Solicitor's costs.

974. Solicitor's costs.

In the absence of any express agreement, the solicitor to a voluntary liquidator has no claim for the payment of his costs against the liquidator personally. His claim is only against the company's assets¹; but his costs are payable in priority to the liquidator's remuneration².

¹ *Re Trueman's Estate, Hooke v Piper* (1872) LR 14 Eq 278.

² See para 810 et seq ante. See also *Re Massey, Re Freehold Land and Brickmaking Co* (1870) LR 9 Eq 367. As to the solicitor's lien see para 808 ante. As to the prescribed order of payment of costs and expenses see para 1009 text and note 2 post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iv) Accounts and Books/975. Liquidator's accounts.

(iv) Accounts and Books

975. Liquidator's accounts.

The liquidator in a voluntary winding up is required to keep the following accounts:

- 1318 (1) an account which he is required to make up when the company's affairs are fully wound up¹;
- 1319 (2) if the winding up continues for more than a year, an account of his acts and dealings and of the winding up, which he must at the end of each year lay before a general meeting of the company in the case of a members' voluntary winding up², and before a general meeting of the company and a meeting of creditors in the case of a creditors' voluntary winding up³; and
- 1320 (3) certain statements which he must send to the registrar of companies when the winding up is not concluded within a year after its commencement⁴.

Since he is an agent of the company, and as such is liable to account at reasonable times, the court may at any time order him to bring in an account on an application by a creditor or contributory⁵.

1 See the Insolvency Act 1986 ss 94(1), 106(1); and para 1020 post.

2 See *ibid* s 93(1), (2); and para 970 ante. As to a winding up where the liquidator is of opinion that the company will be unable to pay its debts see para 942 ante.

3 See *ibid* s 105(1), (2); and para 970 ante.

4 See *ibid* s 192; and para 1005 post. As to when the winding up commences see para 996 post; and as to the records to be maintained by all insolvency practitioners see para 42 et seq ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

5 See *ibid* s 112; para 1012 post. See also *Wright's Case* (1870) 5 Ch App 437.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iv) Accounts and Books/976. Financial records.

976. Financial records.

In a creditors' voluntary winding up, the liquidator is under the same duty as a liquidator in a winding up by the court to prepare and keep financial records in relation to the company¹.

¹ See the Insolvency Regulations 1994, SI 1994/2507, reg 10; and para 595 ante. As to the retention and delivery of administrative records by a liquidator in a creditors' voluntary winding up see reg 13; and para 598 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iv) Accounts and Books/977. Liquidator carrying on business.

977. Liquidator carrying on business.

In a creditors' voluntary winding up, the accounts and records which the liquidator is required to keep where he carries on the business of the company are the same as those required to be kept by the liquidator in a winding up by the court¹.

¹ See the Insolvency Regulations 1994, SI 1994/2507, reg 12; and para 597 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iv) Accounts and Books/978. Provision of accounts and audit.

978. Provision of accounts and audit.

The liquidator¹ must, if required by the Secretary of State at any time, send to the Secretary of State an account in relation to the company of the liquidator's receipts and payments covering such period as the Secretary of State may direct and such account must be certified by the liquidator².

Any such account sent to the Secretary of State must, if he so requires, be audited; but, whether or not the Secretary of State requires the account to be audited, the liquidator must send to the Secretary of State on demand any documents, including vouchers and bank statements, and any information relating to the account³.

1 Ie whether in a creditors' or members' voluntary winding up.

2 Insolvency Regulations 1994, SI 1994/2507, reg 14(1). As to the Secretary of State see para 11 note 10 ante.

3 Ibid reg 14(6).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(iv) Accounts and Books/979. Disposal of company's books, papers and other records.

979. Disposal of company's books, papers and other records.

In the case of voluntary winding up¹, the person who was the last liquidator of a company which has been dissolved may, at any time after the expiration of a period of one year from the date of dissolution, destroy or otherwise dispose of the books, papers and other records of the company².

1 Ie whether in a creditors' or members' voluntary winding up.

2 Insolvency Regulations 1994, SI 1994/2507, reg 16(2).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/980. Filling vacancies.

(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator

980. Filling vacancies.

If in a members' voluntary winding up a vacancy occurs by death¹, resignation² or otherwise³ in the office of liquidator appointed by the company, the company in general meeting⁴ may, subject to any arrangement with its creditors, fill the vacancy⁵. A general meeting⁶ for the purpose may be convened by any contributory⁷ or, if there were more liquidators than one, by the continuing liquidators⁸. The meeting must be held in the manner provided by the Insolvency Act 1986⁹ or by the articles of association¹⁰, or in such manner as may be determined by the court on application by any contributory or by the continuing liquidators¹¹.

If in a creditors' voluntary winding up a vacancy occurs by death, resignation or otherwise in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court¹², the creditors may fill the vacancy¹³. Where such a vacancy occurs, a meeting of creditors to fill the vacancy may be convened by any creditor, or, if there were more liquidators than one, by the continuing liquidators¹⁴.

1 See para 987 post.

2 See para 986 post.

3 See para 981 et seq post.

4 Or, in the case of a winding up in relation to a limited liability partnership, a meeting of the members of the partnership summoned for the purpose: see the Insolvency Act 1986 s 92(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. The quorum required for such a meeting is any quorum required by the partnership for meetings of the members of the partnership and if no requirement for a quorum has been agreed upon the quorum is three members: Insolvency Act 1986 s 92(4); Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3.

5 Insolvency Act 1986 s 92(1). See *Re London Flats Ltd* [1969] 2 All ER 744, [1969] 1 WLR 711 (appointment by meeting consisting of one person invalid). There seems to be no power for the company to fill vacancies in the office of a voluntary liquidator who has been appointed by the court. As to the court's powers see para 981 post.

6 Or, in the case of a winding up in relation to a limited liability partnership, a meeting of the members of the partnership: see the Insolvency Act 1986 s 92(2); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3. As to the quorum for such meetings see note 4 supra.

7 For the meaning of 'contributory' see para 703 ante.

8 Insolvency Act 1986 s 92(2). As to the additional notices required where the company is an authorised deposit-taker or former authorised deposit-taker see para 671 ante. For the meanings of 'authorised deposit-taker' and 'former authorised deposit-taker' see para 147 note 4 ante.

9 Although *ibid* s 92 refers to the Insolvency Act 1986, it seems that the reference to the Insolvency Act 1986 should be a reference to the Companies Act 1985.

10 Or, in the case of a winding up in relation to a limited liability partnership, the partnership agreement: see the Insolvency Act 1986 s 92(3); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch

3. As to the quorum for such meetings see note 4 supra. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

11 Insolvency Act 1986 s 92(3).

12 See para 981 post.

13 Insolvency Act 1986 s 104.

14 Insolvency Rules 1986, SI 1986/1925, r 4.101A (added by SI 1987/1919). As to convening meetings of creditors in such a case see para 949 note 1 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/981. Appointment of liquidator by the court.

981. Appointment of liquidator by the court.

The court may appoint a liquidator if, from any cause whatever, there is no liquidator acting¹. The application may ordinarily be made only by a contributory, a liquidator, or a creditor². The court has power under these provisions to appoint a liquidator in place of a retiring liquidator or to appoint a liquidator in place of a liquidator whom it has removed³.

1 Insolvency Act 1986 s 108(1). See also *Re Sunlight Incandescent Gas Lamp Co* [1900] 2 Ch 728. As to the procedure see para 982 post. The court has jurisdiction to appoint temporary liquidators: *Clements v Udal* [2002] 2 BCLC 606, [2001] BCC 658. The application should ordinarily be made on notice to the liquidator: *Clements v Udal* supra. No liquidator is acting where, for whatever reason, a liquidator is not performing his functions: *Clements v Udal* supra. As to the principles which guide the court in deciding the identity of the liquidator, where a proposed liquidator may have a conflict of interest, see *Fielding v Seery* [2004] BCC 315.

2 *Re New De Kaap Ltd* [1908] 1 Ch 589. In *Re AJ Adams (Builders) Ltd*, *Re Autonational Extended Warranties Ltd* [1991] BCLC 359, [1991] BCC 62, it was held that a former liquidator had locus standi to apply under the Insolvency Act 1986 s 108 but not under s 112 (see para 1012 post). The Privy Council has commented that the courts have consistently regarded the creditors (in the case of an insolvent liquidation) and the contributories (in the case of a solvent liquidation) as the proper persons to make the application, being the only persons interested in the liquidation: *Deloitte & Touche AG v Johnson* [2000] 1 BCLC 485 PC. Where, as under the Insolvency Act 1986 s 108, the categories of persons entitled to apply are not set out in the statute, as a matter of judicial restraint the court will act only on the application of a party with a sufficient interest in the relief sought by the application: *Deloitte & Touche AG v Johnson* supra. In *Re Stella Metals Ltd (in liquidation)* [1997] BCC 626, it was held that the recognised professional body of an insolvency practitioner to whom no license had been granted had standing to apply. In *Clements v Udal* [2002] BCLC 606, [2001] BCC 658, the application was made by the continuing partners of the firm for removal of the outgoing partner. The appointment may be reviewed by the court under the Insolvency Rules 1986, SI 1986/1925, r 7.47 (see para 1030 ante) on the application of a creditor: *Customs and Excise Comrs v Allen* [2003] BPIR 830, [2003] All ER (D) 27 (Apr).

3 *Re Sheppey Portland Cement Co Ltd* (1892) 68 LT 83. As to the removal of a liquidator by the court see the Insolvency Act 1986 s 108(2); and para 984 post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/982. Procedure on appointment by the court.

982. Procedure on appointment by the court.

Where a liquidator is appointed by the court¹, the court's order may not issue unless and until the person appointed has filed in court² a statement to the effect that he is an insolvency practitioner, duly qualified to be the liquidator³, and that he consents so to act⁴.

Thereafter, the court must send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order⁵.

Not later than 28 days from his appointment, the liquidator must give notice of his appointment to all creditors of the company of whom he is aware in that period⁶.

1 Ie whether under the Insolvency Act 1986 s 108 (see para 981 ante) or s 100(3) (appointment by the court where different persons nominated at meetings of creditors and the company: see para 953 ante).

2 For the meaning of 'file in court' see para 129 note 5 ante.

3 As to insolvency practitioners and their qualification see para 8 et seq ante.

4 Insolvency Rules 1986, SI 1986/1925, rr 4.103(1), (2), 4.140(1), (2). As to the prescribed forms of order of the court appointing a liquidator or one or more liquidators see rr 4.103, 4.140, 12.7, Sch 4 Forms 4.29, 4.30.

5 Ibid rr 4.103(3), 4.140(3).

6 Ibid rr 4.103(4), 4.140(4). In a creditors' voluntary liquidation, the liquidator may in the alternative, if the court allows, advertise his appointment in accordance with the court's directions: r 4.103(4). In a creditors' voluntary liquidation, the expense of giving notice under r 4.103(4) must be borne in the first instance by the liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the liquidation: r 4.106(3). As to the giving of notices see para 1089 post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

982 Procedure on appointment by the court

TEXT AND NOTE 5--SI 1986/1925 r 4.103(3) amended: SI 2008/737.

TEXT AND NOTE 6--SI 1986/1925 r 4.103(4) substituted: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/983. Authentication of liquidator's certificate.

983. Authentication of liquidator's certificate.

A copy of the certificate of the liquidator's appointment¹ or, as the case may be, a sealed copy of the court's order appointing him² or a copy of the notice sent by an administrator to the registrar of companies and registered by the registrar when an administration moves to creditors voluntary liquidation³, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up⁴.

1 As to a members' voluntary winding up see para 952 ante; and as to a creditors' voluntary winding up see para 954 ante.

2 See para 982 ante.

3 Ie under the Insolvency Act 1986 s 8, Sch B1 para 83(3) (as added): see para 370 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 Insolvency Rules 1986, SI 1986/1925, rr 4.105, 4.141 (r 4.105 amended by SI 2003/1730).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/984. Removal of liquidator by the court.

984. Removal of liquidator by the court.

The court may, on cause shown, remove a liquidator and appoint another¹. The application may only be made by a contributory, a liquidator, or a creditor². A liquidator of unsound mind may be removed³. Personal misconduct or unfitness is not a necessary condition for the removal of a liquidator; and a liquidator may be removed where he has shown insufficient vigour in carrying out his duties and a too relaxed and complacent attitude to the possibility of wrongdoing on the part of the directors⁴. A liquidator may appeal from an order removing him⁵, but the removal is a matter of judicial discretion and, if it has been exercised according to law, the appellate court will not interfere⁶.

Where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a creditors' meeting for the purpose of removing him⁷, the court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it may not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least seven days' notice⁸. If the application is not so dismissed, the court must fix a venue⁹ for the application to be heard¹⁰. The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application¹¹.

The applicant must, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it¹²; and, subject to any contrary order of the court, the costs of the application are not payable out of the assets¹³.

Where the court removes the liquidator, it must send two copies of the order of removal to him, one to be sent by him forthwith to the registrar of companies, with notice of his ceasing to act¹⁴; and the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal¹⁵. If the court appoints a new liquidator, the procedure¹⁶ on appointment of a liquidator by the court applies¹⁷.

1 Insolvent Act 1986 s 108(2). For the meaning of 'on cause shown' see para 616 note 3 ante. 'Cause' does not mean adverse cause and includes eg the ill-health of the liquidator: *Re Parkdawn Ltd* (15 June 1993, unreported); *Re Sankey Furniture Ltd, ex p Harding, Re Calorifique Ltd, ex p Betts* [1995] 2 BCLC 594 at 602 per Chadwick J (where applications were made on the ground of ill-health (order granted) and on the grounds of a liquidator changing firms (order not granted)). See also *Deloitte & Touche AG v Johnson* [2000] 1 BCLC 485 PC, considering similar provisions under Cayman Islands law: and see further para 610 note 5 ante.

2 *Re New de Kaap Ltd* [1908] 1 Ch 589. See also para 981 note 2 ante.

3 *Re North Molton Mining Co Ltd* (1886) 54 LT 602.

4 *Re Keyapak Homecare Ltd* [1987] BCLC 409, 3 BCC 558; *AMP Enterprises Ltd v Hoffman* [2002] EWHC 1899 (Ch), [2003] 1 BCLC 319.

5 *Re Adam Eyton Ltd, ex p Charlesworth* (1887) 36 ChD 299, CA.

6 *Re Urmston Grange Steamship Co Ltd* (1901) 17 TLR 553, CA.

7 As to the prescribed form of order removing a liquidator or directing the liquidator to summon a meeting of creditors for the purpose of considering his removal see the Insolvent Rules 1986, SI 1986/1925, rr 4.120, 4.143, 12.7, Sch 4 Form 4.39. As to meetings of creditors summoned for this purpose see para 985 post.

8 Ibid rr 4.120(1), (2), 4.143(1), (2). The purpose of r 4.120(2) is to filter out applications with no realistic prospect of success: *Re Buildlead Ltd, Quicksons (South and West) Ltd v Katz* [2003] EWHC 1981 (Ch), [2003] 4 All ER 864, [2004] 1 BCLC 83.

9 For the meaning of 'venue' see para 117 note 3 ante.

10 Insolvency Rules 1986, SI 1986/1925, rr 4.120(2), 4.143(2).

11 Ibid rr 4.120(3), 4.143(3). The proper approach to the use of the power under r 4.120(3) is merits based, and to be used at the time that the court reaches a decision as to whether the application should proceed to hearing under r 4.120(2); if the court concludes at that stage that the application is arguable but likely to fail, the power to order a deposit or security under r 4.120(3) may then be exercised: *Re Buildlead Ltd, Quicksons (South and West) Ltd v Katz* [2003] EWHC 1981 (Ch), [2003] 4 All ER 864, [2004] 1 BCLC 83.

12 Insolvency Rules 1986, SI 1986/1925, rr 4.120(4), 4.143(4).

13 Ibid rr 4.120(5), 4.143(4).

14 Ibid rr 4.120(6)(a), 4.143(5)(a). As to the prescribed form of notice of ceasing to act as voluntary liquidator see rr 4.120, 4.143, 12.7, Sch 4 Form 4.40.

15 Ibid rr 4.120(6)(b), 4.143(5)(b). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

16 As to the procedure on appointment of a liquidator by the court see para 982 ante.

17 Insolvency Rules 1986, SI 1986/1925, rr 4.120(6)(c), 4.143(5)(c).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

984 Removal of liquidator by the court

TEXT AND NOTE 13--SI 1986/1925 r 4.120(5) amended: SI 2008/737.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/985. Removal of liquidator by the company and creditors.

985. Removal of liquidator by the company and creditors.

A liquidator may be removed from office only by an order of the court¹ or, in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose², or, in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the following provisions³. Such a creditors' meeting for the removal of the liquidator must be summoned by him if requested by 25 per cent in value of the company's creditors, excluding those who are connected with the company⁴.

Where the liquidator was appointed by the court⁵, a meeting must be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested, in accordance with the rules⁶, in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or, in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors⁷.

The notice summoning the creditors' meeting must indicate that the removal of the liquidator is the purpose, or one of the purposes, of the meeting; and the notice must draw the attention of creditors to the provisions⁸ relating to the liquidator's release⁹.

At the creditors' meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but, if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman may not adjourn the meeting without the consent of at least one-half, in value, of the creditors present, in person or by proxy, and entitled to vote¹⁰.

The court's powers to regulate such a creditors' meeting on the application of any creditor are the same as in the case of such a meeting in a winding up by the court¹¹.

Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting must forthwith, if at the meeting another liquidator was not appointed, send the certificate of the liquidator's removal to the registrar of companies, and otherwise, deliver the certificate to the new liquidator, who must send it to the registrar¹².

Where a new liquidator is appointed in place of one removed, the former must, in giving notice of his appointment¹³, state that his predecessor has been removed and, if it be the case, that he has been given his release¹⁴.

1 See para 984 ante. It has been suggested that the procedure of petitioning for a compulsory winding-up, where the identity of the liquidator is the cause of the petitioner's grievance, may be inappropriate in light of the court's power to remove a liquidator under the Insolvency Act 1986 s 171: *Re Inside Sport Ltd (in liquidation)* [2000] 1 BCLC 302; but see *Re Zirceram Ltd (in liquidation)*, *J Paterson Brodie & Son (a firm) v Zirceram Ltd (in liquidation)* [2000] 1 BCLC 751 at 759 per Lawrence Collins QC.

2 Insolvency Act 1986 s 171(1), (2)(a). In the case of a winding up in relation to a limited liability partnership, a liquidator may be removed from office by a meeting of the members of the limited liability partnership summoned specially for that purpose: see s 171(2)(a); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

3 Insolvency Act 1986 s 171(2)(b).

- 4 Insolvency Rules 1986, SI 1986/1925, r 4.114(1). For the meaning of 'connected' with a company see para 5 ante.
- 5 le under the Insolvency Act 1986 s 108: see paras 981, 984 ante.
- 6 See paras 654, 949 note 2 ante, which apply to a creditors' voluntary winding up. There appears to be no equivalent provision in a members' voluntary winding up.
- 7 Insolvency Act 1986 s 171(3).
- 8 le ibid s 173(2): see para 992 post.
- 9 Insolvency Rules 1986, SI 1986/1925, r 4.114(2). As to the prescribed form of notice to creditors see rr 4.114, 12.7, Sch 4 Form 4.22.
- 10 Ibid r 4.114(3). As to the procedure generally at creditors' meetings see para 949 ante.
- 11 See para 613 ante.
- 12 Insolvency Rules 1986, SI 1986/1925, r 4.117. As to the prescribed form of certificate of removal of a voluntary liquidator see rr 4.117, 12.7, Sch 4 Form 4.38. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.
- 13 See para 957 ante.
- 14 Insolvency Rules 1986, SI 1986/1925, r 4.118. As to the liquidator's release see para 992 et seq post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/986. Resignation of liquidator.

986. Resignation of liquidator.

In the following circumstances, a liquidator may resign his office by giving notice of his resignation to the registrar of companies¹.

In a members' voluntary winding up, before resigning his office, the liquidator must call a meeting of the company for the purpose of receiving his resignation; and the notice summoning the meeting must indicate that this is the purpose, or one of the purposes, of it². The notice must be accompanied by an account of the liquidator's administration of the winding up, including a summary of his receipts and payments, and a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up³. The liquidator may only proceed under these provisions on grounds of ill-health or because he intends ceasing to be in practice as an insolvency practitioner⁴, or there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of liquidator⁵. Where, however, two or more persons are acting as liquidator jointly, any one of them may proceed under these provisions, without prejudice to the continuation in office of the other or others, on the ground that, in his opinion or that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators⁶. If there is no quorum present at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held⁷. The notice of the liquidator's resignation to the registrar of companies⁸ must be given by him forthwith after the meeting⁹. Where a new liquidator is appointed in place of one who has resigned, the former must, in giving notice of his appointment¹⁰, state that his predecessor has resigned¹¹.

In a creditors' voluntary winding up, the provisions applicable to the resignation of a liquidator in a winding up by the court apply¹², with the following exceptions and modifications. A copy of the notice summoning the meeting of creditors does not have to be sent to the official receiver¹³. Where the liquidator's resignation is accepted by the meeting of creditors, the notice of his resignation to the registrar of companies must be given by him forthwith after the meeting; and, where a new liquidator is appointed in place of the one who has resigned, the certificate of his appointment¹⁴ must be delivered forthwith by the chairman of the meeting to the new liquidator¹⁵. Where the court, on the liquidator's application, makes an order giving him leave to resign, the court must send two sealed copies of the order to the liquidator, who must forthwith send one of them to the registrar of companies¹⁶.

¹ Insolvency Act 1986 s 171(1), (5). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

² Insolvency Rules 1986, SI 1986/1925, r 4.142(1).

³ Ibid r 4.142(2). As to the Insolvency Services Account held by the Secretary of State see para 554 ante. As to the Secretary of State see para 11 note 10 ante.

⁴ As to insolvency practitioners and their qualification see para 8 et seq ante.

⁵ Insolvency Rules 1986, SI 1986/1925, r 4.142(3).

⁶ Ibid r 4.142(4).

- 7 Ibid r 4.142(4A) (added by SI 1987/1919). As to the quorum see para 667 ante.
- 8 le under the Insolvency Act 1986 s 171(5): see the text to note 1 supra. As to the prescribed form of notice of resignation of a voluntary liquidator see the Insolvency Rules 1986 rr 4.110, 4.142, 12.7, Sch 4 Form 4.33.
- 9 Ibid r 4.142(5).
- 10 See para 952 ante.
- 11 Insolvency Rules 1986, SI 1986/1925, r 4.142(6).
- 12 See paras 609-611 ante.
- 13 le the Insolvency Rules 1986, SI 1986/1925, r 4.108(2) (see para 609 ante) does not apply in a creditors' voluntary winding up. As to the official receiver see para 503 et seq ante.
- 14 See para 954 ante.
- 15 Insolvency Rules 1986, SI 1986/1925, r 4.110(1)-(3). Cf r 4.109 (see para 609 ante), which does not apply in a creditors' voluntary winding up.
- 16 Ibid r 4.111(1), (4). As to the prescribed form of order see rr 4.111(4), 12.7, Sch 4 Form 4.35. Cf r 4.111(3), (5) (see para 610 ante), which does not apply in a creditors' voluntary winding up. As to the circumstances in which an application to the court for removal of a liquidator and replacement by a new liquidator may be used as an alternative to the procedures for resignation see *Re Sankey Furniture Ltd, ex p Harding, Re Calorifique Ltd, ex p Betts* [1995] 2 BCLC 594; and see para 984 note 1 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

986 Resignation of liquidator

TEXT AND NOTES--See SI 1986/1925 r 4.49G (other distributions to members in specie) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/987. Liquidator deceased.

987. Liquidator deceased.

Where the liquidator has died, it is the duty of his personal representatives to give notice of the fact, and of the date of death, to the registrar of companies¹ and, in the case of a members' voluntary winding up, to the company's directors, or any one of them, and, in the case of a creditors' voluntary winding up, to the liquidation committee¹, if any, or a member of that committee². In the alternative, however, notice of death may be given, if the deceased liquidator was a partner in a firm, by a partner who is qualified to act as an insolvency practitioner³ or who is a member of any body approved by the Secretary of State for the authorisation of insolvency practitioners⁴, or by any person if he delivers with the notice a copy of the relevant death certificate⁵.

1 As to the prescribed form of notice of death of voluntary liquidator to be sent to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, rr 4.133, 4.145, 12.7, Sch 4 Form 4.44. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

2 Ibid rr 4.133(1), 4.145(1). As to the liquidation committee see para 994 et seq post.

3 As to insolvency practitioners and their qualification see para 8 et seq ante.

4 As to such bodies see para 14 ante. As to the Secretary of State see para 11 note 10 ante.

5 Insolvency Rules 1986, SI 1986/1925, rr 4.133(2), 4.145(2).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/988. Loss of qualification as insolvency practitioner.

988. Loss of qualification as insolvency practitioner.

A liquidator must vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company¹. Where the liquidator vacates office on ceasing to be so qualified, he must forthwith give notice of his doing so to the registrar of companies and the Secretary of State²; and the provisions relating to the liquidator obtaining his release³ apply, as if he had been removed by the court⁴.

¹ Insolvency Act 1986 s 171(1), (4). As to insolvency practitioners and their qualification see para 8 et seq ante.

² Insolvency Rules 1986, SI 1986/1925, rr 4.135(1), (2), 4.146(1), (2). As to the prescribed forms of notice see rr 4.135, 4.146, Sch 4 Forms 4.46, 4.45. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the Secretary of State see para 11 note 10 ante.

³ *Ibid* rr 4.122, 4.144: see para 992 post.

⁴ *Ibid* rr 4.135(3), 4.146(3). Where a liquidator ceases to be qualified to act as an insolvency practitioner, he vacates office automatically before he has complied with his duties under the Insolvency Rules 1986: *Re AJ Adams (Builders) Ltd*, *Re Autonational Extended Warranties Ltd* [1991] BCLC 359, [1991] BCC 62; *Re Stella Metals (in liquidation)* [1997] BCC 626.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/989. Vacation of office on making of winding-up order.

989. Vacation of office on making of winding-up order.

Where the liquidator vacates office in consequence of the court making a winding-up order against the company, the provisions relating to the liquidator obtaining his release¹ apply as if he had been removed by the court².

¹ I.e. the Insolvency Rules 1986, SI 1986/1925, rr 4.122, 4.144: see para 992 post.

² Ibid rr 4.136, 4.147.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/990. Liquidator's duties on vacating office.

990. Liquidator's duties on vacating office.

Where the liquidator ceases to be in office as such in consequence of his removal, resignation or cesser of qualification as an insolvency practitioner¹, he is under obligation forthwith to deliver up to the person succeeding him as liquidator the assets, after deduction of any expenses properly incurred, and distributions made, by him, and further to deliver up to that person the records of the liquidation, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility, and the company's books, papers and other records².

¹ As to insolvency practitioners and their qualification see para 8 et seq ante.

² Insolvency Rules 1986, SI 1986/1925, rr 4.138(1), 4.148.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/991. Vacation of office on completion of liquidation.

991. Vacation of office on completion of liquidation.

Where, in the case of a members' voluntary winding up, a final meeting of the company has been held¹, or in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held², the liquidator whose report was considered at the meeting or meetings must vacate office as soon as he has sent to the registrar of companies a copy of the account and made a return to him of the holding of the meeting or meetings and their dates³, and has given notice to the registrar of companies that the meeting or meetings have been held and of the decisions, if any, of the meeting or meetings⁴.

1 Ie under the Insolvency Act 1986 s 94: see para 1020 post.

2 Ie under *ibid* s 106: see para 1020 post.

3 Ie in compliance with *ibid* ss 94(3), 106(3), as the case may be: see para 1021 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 *Ibid* s 171(1), (6). Where a limited liability partnership is being wound up, these provisions instead apply where a final meeting of the members of the partnership has been held or, in the case of a creditors' voluntary winding up, final meetings of the members of the partnership have been held (see s 171(6); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post), and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) (see para 980 ante) apply for those purposes as they apply for the purposes of s 92 (see s 171(7); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3). For the meaning of 'limited liability partnership' see para 71 note 3 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/992. Release of liquidator in a voluntary winding up.

992. Release of liquidator in a voluntary winding up.

Where a company is being wound up voluntarily, a person who has ceased to be liquidator has his release with effect from the following time:

- 1321 (1) in the case of a person who has been removed from office by a general meeting of the company¹, or by a general meeting of the company's creditors, that has not resolved against his release, or who has died, the time at which notice is given to the registrar of companies in accordance with the rules that that person has ceased to hold office²;
- 1322 (2) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the court, or who has vacated office by reason of his ceasing to be a qualified insolvency practitioner³, or by reason of the making of a winding-up order⁴, such time as the Secretary of State may, on the application of that person, determine⁵;
- 1323 (3) in the case of a person who has resigned, such time as may be prescribed⁶;
- 1324 (4) in the case of a person who has vacated office in a members' voluntary winding up after a final meeting of the company⁷, the time at which he vacated office⁸;
- 1325 (5) in the case of a person who has vacated office in a creditors' voluntary winding up after final meetings of the company and of the creditors⁹, if the final meeting of the creditors has resolved against that person's release, such time as the Secretary of State may, on application by that person, determine¹⁰; and, if that meeting has not resolved against that person's release, the time at which he vacated office¹¹.

1 Or, in the case of a winding up in relation to a limited liability partnership, a meeting of the members of the partnership: see the Insolvency Act 1986 s 173(2)(a); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 Insolvency Act 1986 s 173(1), (2)(a). As to notice in the case of death see para 987 ante. In a members' voluntary winding up, where the liquidator is removed by a meeting of the company, he must forthwith give notice to the registrar of companies of his ceasing to act: Insolvency Rules 1986, SI 1986/1925, r 4.144(2). As to the prescribed form of notice of ceasing to act as voluntary liquidator see rr 4.144, 12.7, Sch 4 Form 4.40. As to the requirement in a creditors' voluntary winding up to give notice to the registrar of companies in the circumstances mentioned see para 985 ante. Where the liquidator is removed by a creditors' meeting which has not resolved against his release, the fact of his release must be stated in the certificate of removal: r 4.122(2). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 Ie under the Insolvency Act 1986 s 171(4): see para 988 ante.

4 See the Insolvency Rules 1986, SI 1986/1925, rr 4.136, 4.137 (as substituted); and para 989 ante.

5 Insolvency Act 1986 s 173(1), (2)(b); Insolvency Rules 1986, SI 1986/1925, rr 4.122(3)(b), 4.144(3). As to the prescribed form of application to the Secretary of State see rr 4.122, 4.144, 12.7, Sch 4 Form 4.41. When the Secretary of State gives the release, he must certify it accordingly, and send the certificate to the registrar of companies: rr 4.122(4), 4.144(4). A copy of the certificate must be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate: rr 4.122(5), 4.144(5). See further note 6 infra. As to the Secretary of State see para 11 note 10 ante.

6 Insolvency Act 1986 s 173(1), (2)(c). In a creditors' voluntary winding up, where the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when he gives notice of his resignation to the registrar of companies: Insolvency Rules 1986, SI 1986/1925, r 4.122(1). As to the prescribed form of notice to be given see rr 4.122, 12.7, Sch 4 Form 4.40. Where the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, he must apply to the Secretary of State for his release: rr 4.122(3)(a), 4.144(3). As to the prescribed form of application by a liquidator to the Secretary of State for the liquidator's release see rr 4.122, 4.144, 12.7, Sch 4 Form 4.41. The provisions set out in note 5 *supra* then apply. In a members' voluntary winding up, where the liquidator resigns, he has his release from the date on which he gives notice of his resignation to the registrar of companies: r 4.144(1). As to the prescribed form of notice see rr 4.144, 12.7, Sch 4 Form 4.40; cf para 986 text and notes 8, 9 *ante*.

7 *Ie* under the Insolvency Act 1986 s 171(6)(a): see para 991 *ante*.

8 *Ibid* s 173(1), (2)(d).

9 *Ie* under *ibid* s 171(6)(b): see para 991 *ante*.

10 As to the procedure see the Insolvency Rules 1986, SI 1986/1925, r 4.122 (see notes 5-6 *supra*); applied by r 4.126(3) (see para 1020 *ante*). As to the final meeting of creditors see further para 1020 *post*.

11 Insolvency Act 1986 s 173(1), (2)(e).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

992 Release of liquidator in a voluntary winding up

NOTE 6--SI 1986/1925 r 4.122(1A) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(4) LIQUIDATORS/(v) Vacancies; Removal and Resignation of Liquidator; Appointment of New Liquidator/993. Effect of release.

993. Effect of release.

Where a liquidator has his release¹, he is, with effect from the time of his release, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator; but nothing in these provisions prevents the exercise, in relation to a person who has had his release, of the court's powers under the provisions² relating to a summary remedy against delinquent liquidators³.

1 Ie under the Insolvency Act 1986 s 173(1), (2): see para 992 ante.

2 Ie *ibid* s 212 (as amended): see para 1013 post.

3 Ibid s 173(4).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(5) LIQUIDATION COMMITTEE/994. Appointment of liquidation committee.

(5) LIQUIDATION COMMITTEE

994. Appointment of liquidation committee.

In the case of a creditors' voluntary winding up, the creditors at the meeting summoned for a day not later than the fourteenth day after the day on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed¹ or at any subsequent meeting may, if they think fit, appoint a committee ('the liquidation committee') of not more than five persons to exercise the functions conferred on it by or under the Insolvency Act 1986². If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as it thinks fit, not exceeding five, to act as members of the committee³. However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee; and, if the creditors so resolve, the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and, on any application to the court under this provision, the court may, if it thinks fit, appoint other persons to act as such members in the place of the persons mentioned in the resolution⁴.

1 Ie under the Insolvency Act 1986 s 98: see para 945 ante.

2 Ibid s 101(1).

3 Ibid s 101(2). In the case of a winding up in relation to a limited liability partnership, it is instead provided that if such a committee is appointed, the limited liability partnership may, when it determines that it be wound up voluntarily or at any time thereafter, appoint such number of persons as it thinks fit to act as members of the committee, not exceeding five: see s 101(2); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 Insolvency Act 1986 s 101(3). As to the making of applications see para 1055 et seq post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(5) LIQUIDATION COMMITTEE/995. Constitution and proceedings of the liquidation committee.

995. Constitution and proceedings of the liquidation committee.

Subject to the specific provisions relating to the appointment of a liquidation committee in the case of a creditors' voluntary winding up¹ and to certain exceptions, modifications and additions, the rules relating to the constitution and proceedings of the liquidation committee in a winding up by the court apply to a liquidation committee appointed in a voluntary winding up².

¹ ie the Insolvency Act 1986 s 101: see para 994 ante.

² As to those rules see para 629 text and note 3, 630-644 ante. The rules apply in a voluntary winding up with the following exceptions, modifications and additions.

The Insolvency Rules 1986, SI 1986/1925, r 4.152 (as amended) (membership of the committee: see para 630 ante) applies except for r 4.152(1). In a voluntary winding up, the committee must have at least three members before it can be established: r 4.152(2).

Rule 4.153 (as amended) (formalities of establishment: see para 631 ante) applies except for r 4.153(5), (7). In a voluntary winding up, the certificate and any amended certificate must be sent by the liquidator to the registrar of companies: r 4.153(6). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. As to the prescribed form of certificate of the constitution of the liquidation committee and the notice to the registrar of its constitution see rr 4.153, 12.7, Sch 4 Forms 4.47, 4.48 respectively. If, after the establishment of the committee, there is any change in its membership, the liquidator must report the change to the registrar of companies: r 4.153(8). As to the prescribed form of report of any change in membership of the liquidation committee and notice to the registrar see rr 4.153, 12.7, Sch 4 Forms 4.49, 4.48.

Rule 4.154 (as amended) (committee established by contributories: see para 632 ante) does not apply.

Rule 4.158(1) (quorum: see para 635 ante) does not apply. In a voluntary winding up, a meeting of the liquidation committee is duly constituted if the notice of it has been given to all the members, and at least two members are present or represented: r 4.158(2).

Rules 4.163, 4.164 (vacancies: see para 638 ante) apply. However, in a voluntary winding up, where the contributories make an appointment under r 4.164(4) (see para 638 ante), the creditor members of the committee may, if they think fit, resolve that the person appointed ought not to be a member of the committee; and (1) that person is not then, unless the court otherwise directs, qualified to act as a member of the committee; and (2) on any application to the court for such a direction, the court may, if it thinks fit, appoint another person, being a contributory, to fill the vacancy on the committee: r 4.164(5).

Rule 4.165 (voting rights and resolutions: see para 639 ante) does not apply. In a voluntary winding up, at any meeting of the liquidation committee, each member of it, whether present himself or by his representative, has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it: r 4.166(1). Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting; and the record must be signed by the chairman and kept with the records of the liquidation: r 4.166(2).

Rule 4.167 (as amended) (resolutions by post: see para 640 ante) applies except for r 4.167(3), (5). In a voluntary winding up, any member of the liquidation committee may, within seven business days from the date of the liquidator sending out the resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution: r 4.167(4). In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the members that they concur with it: r 4.167(6). For the meaning of 'business day' see para 113 note 4 ante.

Rule 4.171 (composition of committee when creditors paid in full: see para 644 ante) applies except for r 4.171(2). In a voluntary winding up, the liquidator must forthwith send a copy of the certificate to the registrar of companies: r 4.171(3). As to the prescribed form of certificate that the creditors have been paid in full see rr 4.171, 12.7, Sch 4 Form 4.51.

UPDATE

939-1024 Voluntary Winding Up

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995 Constitution and proceedings of the liquidation committee

TEXT AND NOTES--SI 1986/1925 r 4.153 amended, r 4.171 substituted by r 4.171A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(6) COMMENCEMENT AND CONSEQUENCES OF VOLUNTARY WINDING UP/996. Commencement of voluntary winding up.

(6) COMMENCEMENT AND CONSEQUENCES OF VOLUNTARY WINDING UP

996. Commencement of voluntary winding up.

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up¹. The date of commencement is not altered by a compulsory winding-up order being made².

¹ Insolvency Act 1986 s 86. This is so even if a resolution is passed purporting to render the resolution conditional on a subsequent event: *Re Norditrack (UK) Ltd (in administration)* [2000] 1 All ER 369, [2000] 1 BCLC 467. As to the passing of the resolution to wind up see para 943 et seq ante. In the case of a voluntary winding up relating to a limited liability partnership, it is instead provided that the winding up is deemed to commence at the time when the partnership determines that it be wound up voluntarily: see the Insolvency Act 1986 s 86; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post.

² See para 489 ante.

UPDATE

939-1024 Voluntary Winding Up

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(6) COMMENCEMENT AND CONSEQUENCES OF VOLUNTARY WINDING UP/997. Consequences of voluntary winding up.

997. Consequences of voluntary winding up.

Notwithstanding anything to the contrary in its articles of association¹, the corporate state and corporate powers of a company which goes into voluntary winding up continue until it is dissolved². From the commencement of the winding up it must, however, cease to carry on its business, except so far as may be required for its beneficial winding up³. Contracts with a company which are not required for its beneficial winding up are not, however, illegal as between the company and the other contracting party⁴.

The passing of a resolution for voluntary winding up does not itself cause the directors' powers to cease, but on the appointment of a liquidator all those powers cease except, in the case of a members' voluntary winding up, so far as the company in general meeting or the liquidator or, in the case of a creditors' voluntary winding up, so far as the liquidation committee or, if there is no such committee, the creditors sanction their continuance⁵. A general meeting may elect directors, and in the case of a members' voluntary winding up, sanction the exercise by them of any powers which they possessed before the company went into liquidation⁶. From the commencement of the winding up, however, the members have no power to override the liquidator's title or ratify to the detriment of creditors anything done previously by the directors⁷.

If it involves the immediate cessation of the company's business, a voluntary winding up may operate as a dismissal of the company's employees⁸.

Where a lease to a company contains a proviso for re-entry on the company's liquidation, the proviso, in the absence of express restriction on the meaning of 'liquidation', will apply on the voluntary winding up of the company, even if the winding up is only for the purposes of reconstruction⁹.

1 In the case of a winding up in relation to a limited liability partnership, this is a reference to the limited liability partnership agreement: see the Insolvency Act 1986 s 84(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. 'Limited liability partnership agreement', in relation to a limited liability partnership, means any agreement, express or implied, made between the members of the limited liability partnership or between the partnership and the members of the partnership which determines the mutual rights and duties of the members, and their rights and duties in relation to the partnership: Insolvency Act 1986 s 436 (amended for these purposes by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3); and see para 1309 post; and PARTNERSHIP. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

2 Insolvency Act 1986 s 87(2).

3 Ibid s 87(1). This may cause inconvenience where a company sells its business to another company which is not a private company, as the new company itself cannot commence business for some time: see COMPANIES vol 14 (2009) PARA 74. The continuance of the directors' powers to carry on the business may, however, be sanctioned. From the commencement of winding up, a company's existence continues solely for the purpose of winding up, and not for another purpose, such as an amalgamation (*Re London, Bombay and Mediterranean Bank Ltd, Drew's Case* (1867) 36 LJ Ch 785 at 789), but the ensuring of a smooth take-over may be required for the beneficial winding up of the company (*Willis v Association of Universities of British Commonwealth* [1965] 1 QB 140, [1964] 2 All ER 39, CA).

4 *Bateman & Co v Ball* (1887) 56 LQB 291, not dissented from in *Hire Purchase Furnishing Co v Richens* (1887) 20 QBD 387 at 389, CA (where it was held that, assuming that such contracts were illegal, the onus of

proving that the contract was not required for the beneficial winding up of the company lies on the person asserting the illegality).

5 Insolvency Act 1986 ss 91(2), 103. Where a limited liability partnership is being wound up, the powers of the members of the partnership cease on the appointment of a liquidator except to the extent that a meeting of the members summoned for the purpose, or the liquidator, sanctions their continuance (see s 91(2); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3; and para 1308 post), and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) (see para 980 ante) apply for those purposes as they apply for the purposes of s 92 (see s 91(3); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3).

6 *Ladd's Case* [1893] 3 Ch 450; cf *Hirsch & Co v Burns* (1897) 77 LT 377, HL. *Ladd's Case* supra was decided before the enactment of the Companies Act 1929, when the provisions now applicable to the sanctioning of a continuance of the directors' powers in a members' voluntary winding up applied to every voluntary winding up: see the Companies (Consolidation) Act 1908 s 186(iii) (repealed).

7 *Precision Dippings Ltd v Precision Dippings Marketing Ltd* [1986] Ch 447, [1985] 3 WLR 812, CA.

8 See further COMPANIES vol 15 (2009) PARA 1373.

9 *Horsey Estate Ltd v Steiger* [1899] 2 QB 79, CA; *Pannell v City of London Brewery Co* [1900] 1 Ch 496 at 502; *Fryer v Ewart* [1902] AC 187, HL. In practice provisos for re-entry commonly exclude liquidation for the purpose of reconstruction or amalgamation from the events giving rise to the right to re-enter. As to provisos for re-entry generally see LANDLORD AND TENANT vol 27(1) (2006 Reissue) paras 603-604.

UPDATE

939-1024 Voluntary Winding Up

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(6) COMMENCEMENT AND CONSEQUENCES OF VOLUNTARY WINDING UP/998. Transfer of shares.

998. Transfer of shares.

Any transfer of shares¹ not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company² made after the commencement of a voluntary winding up³, is void⁴. The liquidator may, without the sanction of the court, sanction transfers during the liquidation absolutely or conditionally⁵; and the power to sanction a transfer involves the power to alter the register of members⁶. When the liquidator sanctions successive transfers, the ultimate transferee only is liable to contribute as a present member, the transferor and prior transferees being subject to liability as past members⁷.

The liquidator may set aside a transfer of shares to a minor⁸ shortly before the commencement of the winding up even if the minor becomes of full age during the liquidation⁹.

The right to transfer debentures is not affected by the winding up¹⁰.

1 In the case of a winding up in relation to a limited liability partnership, this is a reference to the interest of any member in the property of the limited liability partnership: see the Insolvency Act 1986 s 88; the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

2 As to what amounts to an alteration of status see para 702 ante. The execution of a transfer without the liquidator's sanction is void but not illegal; and a claim may lie for refusal to execute a transfer even though the sanction has not been obtained: *Biederman v Stone* (1867) LR 2 CP 504.

3 As to when the winding up commences see para 996 ante.

4 Insolvency Act 1986 s 88.

5 *Re National Bank of Wales, Taylor, Phillips and Rickards' Cases* [1897] 1 Ch 298, CA.

6 *Re National Bank of Wales, Taylor, Phillips and Rickards' Cases* [1897] 1 Ch 298, CA; *Cleve v Financial Corp'n* (1873) LR 16 Eq 363. The power to rectify the register given to the court by the Companies Act 1985 s 359 is exercisable after the commencement of a voluntary winding up, and may operate so as to place a transferee's name on the register as on a day before the passing of the winding-up resolution: *Re Sussex Brick Co* [1904] 1 Ch 598, CA; and see *Re Violet Consolidated Gold-Mining Co* (1899) 68 LJ Ch 535.

7 *Re National Bank of Wales, Taylor, Phillips and Rickards' Cases* [1897] 1 Ch 298, CA.

8 As to the attainment of majority at the age of 18 see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 1.

9 *Castello's Case* (1869) LR 8 Eq 504; *Symon's Case* (1870) 5 Ch App 298. Cf para 731 ante.

10 *Re Goy & Co Ltd, Farmer v Goy & Co Ltd* [1900] 2 Ch 149. Equities against the transferor are enforceable against the transferee: see *Re Palmer's Decoration and Furnishing Co* [1904] 2 Ch 743; *Re Rhodesia Goldfields Ltd, Partridge v Rhodesia Goldfields Ltd* [1910] 1 Ch 239.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(6) COMMENCEMENT AND CONSEQUENCES OF VOLUNTARY WINDING UP/999. Forfeiture of shares.

999. Forfeiture of shares.

A valid forfeiture of shares¹ before the commencement of the winding up cannot be cancelled by the liquidator².

1 See para 998 note 1 ante.

2 *Dawes' Case* (1868) LR 6 Eq 232. As to when the winding up commences see para 996 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(7) CREDITORS/1000. Proof of debts.

(7) CREDITORS

1000. Proof of debts.

All debts and claims provable in a winding up by the court are provable in a voluntary winding up¹. Statute-barred debts may not be admitted, except that, in a voluntary liquidation where the company is solvent, they may, it seems, be admitted if all contributories consent².

Preferential debts must be paid in priority to all other debts, as in the case of a compulsory winding up³, except that the date up to which the amounts are to be calculated is the date of the passing of the resolution for the voluntary winding up⁴, whether a compulsory order is or is not subsequently made⁵.

The same rules apply as regards set-off and secured creditors in a voluntary winding up as in a winding up by the court⁶. The liquidator may, with the necessary sanction, pay any classes of creditors in full or make any compromise or arrangement with creditors or persons claiming to be creditors⁷.

Rent and other periodical payments are apportioned up to the date of the winding up resolution⁸; and debts in a currency other than sterling are to be converted as at that date⁹.

A creditor may prove for a debt not payable at the date of the winding-up resolution as in the case of a debt not payable at the date of the winding-up order in a winding up by the court¹⁰.

The same rules apply relating to the estimate of quantum, negotiable instruments, discounts and interest in a voluntary winding up as in a winding up by the court¹¹.

The assignment to third parties of the company's rights in respect of certain contracts of insurance operates, with certain exceptions¹², in the case of a voluntary winding up¹³.

1 Insolvent Rules 1986, SI 1986/1925, rr 4.1(1)(c) (substituted by SI 1987/1919). See paras 749 et seq ante, 1001 post.

2 *Re Art Reproduction Co Ltd* [1952] Ch 89, [1951] 2 All ER 984; cf *Re Fleetwood and District Electric Light and Power Syndicate* [1915] 1 Ch 486; and see para 758 ante.

3 See para 763 ante.

4 See para 996 ante.

5 See the Insolvency Act 1986 s 387(3)(c) (as amended); and para 764 ante.

6 See the Insolvency Rules 1986, SI 1986/1925, r 4.1 (as substituted and amended); and paras 792, 798 et seq ante. There is one exception to this: the provisions of r 4.95(2) (position of a secured creditor as the petitioner to wind up: see para 799 ante) do not apply in a voluntary winding up.

7 See the Insolvency Act 1986 ss 165, 167, Sch 4 Pt I para 2; and para 959 ante.

8 See para 794 ante.

9 See para 793 ante.

10 See para 796 ante.

11 See paras 789-791, 795 ante.

12 See para 673 notes 1, 3 ante.

13 See para 673 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(7) CREDITORS/1001. Application of rules as to proof of debts.

1001. Application of rules as to proof of debts.

With certain exceptions, modifications and additions, the rules as to proof of debts in a winding up by the court apply in the case of a voluntary winding up¹. The main difference concerns the form and content of proof. In a voluntary winding up, whether members' or creditors', the liquidator may require a person claiming to be a creditor of the company and wishing to recover his debt, in whole or in part, to submit the claim in writing to him². A creditor who claims, whether or not in writing, is referred to as 'proving' for his debt; and a document by which he seeks to establish his claim is his 'proof'³. In a voluntary winding up, the creditor's proof may be in any form⁴. In a voluntary winding up, the liquidator, or the convener or chairman of any meeting, may, if he thinks it necessary for the purpose of clarifying or substantiating the whole or any part of a creditor's claim made in his proof, call for details of any matter required to be stated in a creditor's proof of debt in a winding up by the court⁵, or for the production to him of such documentary or other evidence as he may require⁶.

The rules relating to the establishment of claims by affidavit⁷, the cost of proving⁸, the inspection of proofs⁹, the position where a new liquidator is appointed¹⁰, the admission and rejection of proofs for dividend¹¹, appeals against a decision on a proof¹², the withdrawal or variation of a proof¹³ and the expunging of a proof by the court¹⁴ which apply in a winding up by the court also apply in a voluntary winding up¹⁵.

A liquidator in a voluntary winding up is not liable as an insurer in respect of every debt which may subsequently be shown to have been wrongly admitted; but a high standard of care and diligence is required¹⁶.

1 See para 775 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 4.73(2). Cf r 4.73(1), which requires, in a winding up by the court, a person who claims to be a creditor to submit his claim in writing to the liquidator: see para 775 ante.

3 Ibid r 4.73(3).

4 Ibid r 4.73(6). Cf r 4.73(4), (5), which sets out the requirements of the form of proof in a winding up by the court: see para 775 ante. Accordingly, the rules relating to the supply of forms and contents of proof (rr 4.74, 4.75: see paras 777-778 ante) do not apply in a voluntary winding up.

5 Ie those matters specified in ibid r 4.75(1)(a)-(g): see para 778 heads (1)-(7) ante.

6 Ibid r 4.76.

7 See para 779 ante. There is one exception to this: the provisions of ibid r 4.77(3) (swearing of affidavits: see para 779 ante) do not apply in a voluntary winding up.

8 See para 780 ante.

9 See para 781 ante.

10 See para 782 ante.

11 See para 783 ante.

12 See para 786 ante.

13 See para 787 ante.

14 See para 788 ante.

15 Insolvency Rules 1986, SI 1986/1925, r 4.1(1)(c) (substituted by SI 1987/1919).

16 *Re Home and Colonial Insurance Co Ltd* [1930] 1 Ch 102 at 125.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(7) CREDITORS/1002. Security for costs.

1002. Security for costs.

Where a person resident out of the jurisdiction applies for a declaration that he is entitled to prove, the court may order him to give security for costs¹.

¹ *Re Pretoria Pietersburg Rly Co (No 2)* [1904] 2 Ch 359.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(8) CONTRIBUTORIES/1003. Settling list of contributories.

(8) CONTRIBUTORIES

1003. Settling list of contributories.

In a voluntary winding up, the same persons are contributories, and are under the same liability in that capacity, as in the case of a winding up by order of the court¹. The liquidator may exercise the court's powers of settling a list of contributories and of making calls, and must adjust the rights of contributories among themselves².

The list of contributories is prima facie evidence of the liability of the persons named in it to be contributories³. The list ought to comprise not only all persons properly on the register, but also all those who, although not on it, ought to be put on it⁴. If the liquidator thinks a person ought to be on the list, he should put him on and leave him to apply to be taken off, and should not himself apply to the court for a declaration of liability⁵. The rules relating to the list of contributories do not apply to a voluntary winding up⁶; but the practice in a winding up by the court⁷ should be followed as closely as possible.

1 See the Insolvency Act 1986 ss 74, 75, 79-82, which are not in terms confined to winding up by the court; and para 703 et seq ante. The provisions of the Insolvency Act 1986 with respect to winding up apply, except where otherwise stated, to the winding up of a company in any mode: s 73(2).

2 Ibid s 165(4)(a), (b), (5).

3 Ibid s 165(4)(a).

4 *Re National Bank of Wales, Taylor, Phillips and Rickards' Cases* [1897] 1 Ch 298 at 308, CA.

5 *Re Cornwall Brick, Tile and Terra Cotta Co* (1893) 37 Sol Jo 214.

6 See the Insolvency Rules 1986, SI 1986/1925, rr 4.195-4.210, which do not apply to a voluntary winding up: r 4.1(1) (substituted by SI 1987/1919; and amended by SI 1998/1129; SI 2001/3649), Insolvency Rules 1986, SI 1986/1925, r 4.1(3) (amended by SI 1987/1919).

7 See para 720 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1003 Settling list of contributories

NOTE 1--Insolvency Act 1986 s 73 substituted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(8) CONTRIBUTORIES/1004. Calls.

1004. Calls.

The rules relating to calls in a winding up by the court do not apply in a voluntary winding up¹, but the practice in winding up by the court should be followed as closely as possible². If the liquidator in a voluntary winding up makes a call³ on contributories, he may apply for a balance order⁴ against those contributories who do not pay, directing them to pay to him the amount of the call. Although a contributory may not up to that time have raised any objection to his name being placed on the list, he may, on the hearing of the application, resist the call on the ground that his name has been improperly included. The liquidator may also obtain an order to enforce any calls made by the directors before the winding up commenced⁵. Where an action for calls has been brought before winding up, to which set-off has been pleaded as a defence, but there has been no judgment, no allowance may be made when the liquidator applies for a balance order, by way of set-off against the amount of calls⁶. Where the liquidator in such a case settles the defendant on the list of contributories and, after giving notice to discontinue the action, applies for a balance order, this application will not be stayed until he pays the taxed costs of the action; but the amount of taxed costs will be allowed out of the money recovered⁷. A person whose name is settled by a voluntary liquidator on the list of contributories is liable for any calls the liquidator makes, even though the contributory has received no notice that he has been settled on the list⁸.

1 Insolvent Rules 1986, SI 1986/1925, r 4.1(1) (substituted by SI 1987/1919; and amended by SI 1998/1129; SI 2001/3649), Insolvent Rules 1986, SI 1986/1925, r 4.1(3) (amended by SI 1987/1919). As to calls see the Insolvent Rules 1986, SI 1986/1925, rr 4.202-4.205; and paras 734-736 ante.

2 See para 733 ante.

3 As to the enforcement of calls by a receiver in the name of the liquidator see the cases cited in COMPANIES vol 15 (2009) PARA 1369.

4 As to balance orders see para 736 ante.

5 *Stone v City and County Bank* (1877) 3 CPD 282, CA. As to when the winding up commences see para 996 ante.

6 *Re Hiram Maxim Lamp Co* [1903] 1 Ch 70.

7 *Re United Service Association* [1901] 1 Ch 97.

8 *Brighton Arcade Co v Downing* (1868) LR 3 CP 175 at 187; cf *Re London Bank of Scotland* [1867] WN 114.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(9) INFORMATION AS TO PENDING WINDING UP/1005. Half-yearly statements by liquidator.

(9) INFORMATION AS TO PENDING WINDING UP

1005. Half-yearly statements by liquidator.

If the winding up is not concluded¹ within one year after its commencement², the liquidator must, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation³.

If the winding up is not concluded within one year from its commencement, the statement must be sent not more than 30 days after the expiration of that year, and thereafter six-monthly until the winding up is concluded⁴. The liquidator's final statement must, however, be sent forthwith after the conclusion of the winding up⁵.

No statement is, however, required to be delivered under these provisions where the return of the final meeting in respect of the company⁶ is delivered before the date at which the statement is to be delivered and that return shows that no assets or funds of the company remain unclaimed or undistributed in the hands or under the control of the liquidator or any former liquidator; but in such a case the liquidator must deliver a copy of that return to the Secretary of State⁷.

Every statement so sent to the registrar of companies must be in duplicate⁸.

1 For these purposes, the winding up is concluded at the date of the dissolution of the company, except that, if at that date any assets or funds of the company remain unclaimed or undistributed in the hands or under the control of the liquidator or any former liquidator, the winding up is not concluded until those assets or funds have either been distributed or been paid into the Insolvency Services Account: Insolvency Rules 1986, SI 1986/1925, r 4.223(2). As to the Insolvency Services Account see paras 554 ante, 1010 post.

2 As to the commencement of the winding up see para 996 ante.

3 Insolvency Act 1986 s 192(1). As to penalties see para 1008 post. This provision applies to every winding up, but is not in practice operative in the case of a winding up by the court: see para 602 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 Insolvency Rules 1986, SI 1986/1925, r 4.223(1) (substituted by SI 1987/1919). As to the prescribed form of statement by the liquidator to be sent to the registrar of companies see the Insolvency Rules 1986, SI 1986/1925, rr 4.223, 12.7, Sch 4 Form 4.68 (substituted by SI 1987/1919); and para 1006 post.

5 Insolvency Rules 1986, SI 1986/1925, r 4.223(3).

6 Ie under the Insolvency Act 1986 s 94 or s 106: see para 1020 et seq post.

7 Insolvency Rules 1986, SI 1986/1925, r 4.223(3A) (added by SI 1987/1919). The Insolvency Rules 1986, SI 1986/1925, r 4.223 (as amended) applies to any winding up mentioned in the Insolvency Act 1986 s 437, Sch 11 para 4(1) (see para 434 ante) on and after 11 January 1988: Insolvency (Amendment) Rules 1987, SI 1987/1919, r 3(3). As to the Secretary of State see para 11 note 10 ante.

8 Insolvency Rules 1986, SI 1986/1925, r 4.223(4).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1005 Half-yearly statements by liquidator

TEXT AND NOTES--SI 1986/1925 r 4.223 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(9) INFORMATION AS TO PENDING WINDING UP/1006. Contents of liquidator's statements.

1006. Contents of liquidator's statements.

Every statement must contain a detailed account of all the liquidator's realisations and disbursements in respect of the company¹ not including payments into the Insolvency Services Account², other than unclaimed dividends, or payments into a bank, building society or any other financial institution³. When the liquidator carries on a business, a trading account must be forwarded as a distinct account; and the totals of receipts and payments on the trading account must alone be set out in the statement⁴. When dividends or instalments of compositions etc are paid to creditors, or a return of surplus assets is made to contributories, the total amount of each dividend etc actually paid must be entered in the statement of disbursements as one sum; and the liquidator must forward separate accounts, showing in lists the amount of the claim of each creditor, and the amount of dividend etc payable to each creditor or contributory⁵. When unclaimed dividends etc are paid into the Insolvency Services Account, the total amount so paid in should be entered in the statement of disbursements as one sum; and the items to be paid in relation to unclaimed dividends should first be included in the realisations side of the account⁶. Credit should not be taken in the statement of disbursements for any amount in respect of the liquidator's remuneration unless it has been duly allowed by resolutions of the liquidation committee or of the creditors or of the company in general meeting, or by order of the court as the case may require, or is otherwise allowable under the provisions of the Insolvency Rules 1986⁷.

1 The statement of realisations should contain a record of all receipts derived from assets existing at the date of the winding-up resolution and subsequently realised, including balance at bank, book debts and calls collected, property sold etc, and the account of disbursements should contain payments for costs, charges and expenses, or to creditors or contributories. Receipts derived from deposit accounts and money market deposits are to be included in the 'balance at bank'. Only actual investments are to be included in the 'amounts invested'. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements: see the Insolvency Rules 1986, SI 1986/1925, rr 4.223, 12.7, Sch 4 Form 4.68 Note (1) (Sch 4 Form 4.68 substituted by SI 1987/1919). The statement is required in duplicate: see the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 4.68 Note (6) (as so substituted). See also para 1005 ante.

2 As to the Insolvency Services Account see para 554 ante; and as to payments into the account see para 1010 post.

3 See the Insolvency Rules 1986, SI 1986/1925, Sch 4 Form 4.68 Note (1) (as substituted: see note 1 supra). Interest received on any investment should be shown in the realisations. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, and the totals carried forward from one account to another without any intermediate balance, so that the gross totals represent the total amounts received and paid by the liquidator respectively: see Sch 4 Form 4.68 Note (1) (as so substituted).

4 See *ibid* Sch 4 Form 4.68 Note (2) (as substituted: see note 1 supra).

5 See *ibid* Sch 4 Form 4.68 Note (3) (as substituted: see note 1 supra).

6 See *ibid* Sch 4 Form 4.68 Note (4) (as substituted: see note 1 supra).

7 See *ibid* Sch 4 Form 4.68 Note (5) (as substituted: see note 1 supra).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1006 Contents of liquidator's statements

TEXT AND NOTES--SI 1986/1925 r 4.223, Sch 4 Form 4.68 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(9) INFORMATION AS TO PENDING WINDING UP/1007. Duty to send statements to creditors etc.

1007. Duty to send statements to creditors etc.

In the case of a voluntary winding up¹, the liquidator must, on request from any creditor, contributory or director of the company for a copy of a statement for any period, including future periods, sent to the registrar of companies², send such copy free of charge to the person making the request; and the copy of the statement must be sent within 14 days of the liquidator sending the statement to the registrar or the receipt of the request, whichever is the later³.

¹ ie whether in a creditors' or members' voluntary winding up.

² ie under the Insolvency Act 1986 s 192: see paras 1005, 1008 post. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

³ Insolvency Regulations 1994, SI 1994/2507, reg 11(2). As to the entitlement of persons to inspect documents kept by the registrar of companies see COMPANIES vol 14 (2009) PARA 149. The Insolvency Act 1986 s 155 (as amended), enabling an order to be made for inspection of books and papers by creditors etc (see para 1086 post), does not apply to voluntary liquidations: s 155(1). See also *Morgan's Case* (1884) 28 ChD 620.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(9) INFORMATION AS TO PENDING WINDING UP/1008. Penalties.

1008. Penalties.

If a liquidator fails to comply with the provisions relating to the sending of statements to the registrar of companies¹, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum².

¹ See under the Insolvency Act 1986 s 192: see para 1005 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

² Ibid ss 192(2), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to enforcement of the liquidator's duty to make returns etc see s 170; and para 570 ante. As to the appropriate penalty where a liquidator's failure to send statements is prolonged and only corrected after an application for his committal see *Re Grantham Wholesale Fruit Vegetable and Potato Merchants Ltd* [1972] 1 WLR 559. See also *Re H and R Transport and Shipping Ltd* (1972) 116 Sol Jo 842.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(10) DISTRIBUTION OF ASSETS/1009. How assets are to be applied.

(10) DISTRIBUTION OF ASSETS

1009. How assets are to be applied.

The liquidator is appointed for the purpose, inter alia, of distributing the company's assets¹, which must be applied:

- 1326 (1) in payment of all expenses properly incurred in the voluntary winding up, including the liquidator's remuneration, which are payable in priority to all other claims²;
- 1327 (2) subject to the statutory provisions as to preferential payments, in satisfaction of the company's liabilities *pari passu*³; and
- 1328 (3) unless the articles of association otherwise provide, in distribution among the members according to their rights and interests in the company⁴.

Contracts purporting to exclude or vary these provisions as to the application of the company's assets are void⁵.

Subject to the provisions described below in the case of a members' voluntary winding up, the rules as to the collection and distribution of assets, including the payment of dividends, apply in a voluntary winding up as in the case of a winding up by the court⁶.

In a members' voluntary winding up, the liquidator may give notice in such newspaper as he considers most appropriate for the purpose of drawing the matter to the attention of the company's creditors that he intends to make a distribution to creditors⁷. The notice must specify a date ('the last date for proving') up to which proofs may be lodged; and the date must be the same for all creditors and not less than 21 days from that of the notice⁸. The liquidator is not obliged to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit⁹. A creditor who has not proved his debt before the last date for proving or, after that date, increases the claim in his proof is not entitled to disturb, by reason that he has not participated in it, either at all or, as the case may be, to the extent that his increased claim would allow, that distribution or any other distribution made before his debt was proved or his claim increased; but, when he has proved his debt, or, as the case may be, increased his claim, he is entitled to be paid, out of any money for the time being available for the payment of any further distribution, any distribution or distributions which he has failed to receive¹⁰. Where the distribution proposed to be made is to be the only or the final distribution in that winding up, the liquidator may make that distribution without regard to the claim of any person in respect of a debt not already proved; but in such a case the notice¹¹ must state the effect of this provision¹².

¹ Insolvency Act 1986 ss 91(1), 100(1). The assets include uncalled capital: *Webb v Whiffin* (1872) LR 5 HL 711 at 724.

² Insolvency Act 1986 s 115. Section 115 is merely a provision dealing with priority and does not provide that any expenses are to be payable out of the company's assets, but assumes that they are so payable and provides for their priority: *Re MC Bacon Ltd* [1991] Ch 127, [1990] 3 WLR 646; *Re RS & M Engineering Co Ltd, Mond v Hammond Suddards (No 2)* [2000] Ch 40, [1999] 3 WLR 697, [1999] 2 BCLC 485, CA (decided in the context of compulsory liquidation under the similar provisions of the Insolvency Act 1986 s 156 (see para 810 ante)); *Re Exchange Travel (Holdings) Ltd (No 3)*, *Katz v McNally* [1997] 2 BCLC 579, CA (where Phillips LJ and

Morritt LJ, obiter, did not follow *Re MC Bacon Ltd* supra); *Re Floor Fourteen Ltd*, *Lewis v IRC* [2001] 3 All ER 499, [2001] 2 BCLC 392, CA (where *Re RS & M Engineering Co Ltd* supra and *Re MC Bacon Ltd* supra, were approved and followed, and the obiter dicta of Phillips LJ and Morritt LJ in *Re Exchange Travel (Holdings) Ltd (No 3)* supra were disapproved); see further *Re MT Realisations Ltd* [2003] EWHC 2895 (Ch), [2004] 1 All ER 577 (where application was made in the voluntary winding up under the Insolvency Act 1986 s 112 (see para 1012 post) for the court to exercise its powers under s 156 (see para 810 ante)). It should be noted that in so far as *Re MC Bacon Ltd* supra and *Re RS & M Engineering Ltd* supra concern the issue of whether liquidation expenses are payable out of assets subject to a floating charge, the reasoning is incorrect: see now *Buchler v Talbot* [2004] UKHL 9, [2004] 1 All ER 1289; and para 810 ante. As to the prescribed order of priority of payment of expenses of the liquidator see the Insolvency Act 1986 s 156; and para 810 et seq ante. Although s 156 does not apply in a voluntary winding up in the event of the assets being insufficient, such powers may be exercised under s 112: see para 1012 post. Prima facie, all expenses ought to be paid before the liquidator's remuneration but, it seems, he may be authorised to retain the remuneration paid when he had no reason to suppose that the assets would be insufficient for the payment of the expenses: *Re Beni-Felkai Mining Co Ltd* [1934] Ch 406; *Re Linda Marie Ltd* [1989] BCLC 46, 4 BCC 463.

The only pre-liquidation expenses which come within the Insolvency Act 1986 s 115 are those incurred specifically for the purpose of enabling the company to pass the winding-up resolution and to take the other steps required in relation to the first meeting of creditors: *Re AV Sarge & Co Ltd* [1986] BCLC 490, 2 BCC 99, 306. An accountant instructed by the company's directors to take steps to place the company in voluntary liquidation and who (inter alia) collected book debts of the company, but who was not subsequently appointed liquidator, was not entitled to expenses and scale fees relating to the collection of the debts: *Re Sandwell Copiers Ltd* [1988] BCLC 209, 4 BCC 227.

3 As to preferential payments see the text to note 2 supra; and para 763 et seq ante. The liabilities which the liquidator is under a duty to discharge do not include liabilities not provable by legal process in England, such as a tax claim by a foreign government (*Government of India, Ministry of Finance (Revenue Division) v Taylor* [1955] AC 491, [1955] 1 All ER 292, HL). See also para 749 text and note 8 ante. As to the principle that a claim does not lie in English courts to recover taxes imposed by foreign revenue law see CONFLICT OF LAWS.

Liabilities to creditors rank in priority to all claims of members: cf *Elkins v Capital Guarantee Society* (1900) 16 TLR 423, CA (where the balance of a fund set apart for payment of bondholders whose bonds were not payable until 50 years had elapsed had not been claimed for over ten years after advertisements, and the court refused to order the unclaimed balance to be paid to the liquidator on behalf of the shareholders).

4 Insolvency Act 1986 s 107. The articles may provide for a distribution on a different basis from the rights and interests of the members during the life of the company eg by a distribution of the assets in specie: cf *Re South African Supply and Cold Storage Co*, *Wild v South African Supply and Cold Storage Co* [1904] 2 Ch 268; *Stafford Coal and Iron Co Ltd v Brogan (Inspector of Taxes)* [1963] 3 All ER 277, [1963] 1 WLR 905, HL (mutual insurance company; distributions proportional to premiums paid in last five financial years; note that, so far as this case decided that the distributions were not taxable in the hands of the recipients, it is abrogated by the Income and Corporation Taxes Act 1988 s 491 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) para 1408)). See para 837 ante. See also *Re Merchant Navy Supply Association Ltd* [1947] 1 All ER 894. As to income distributed in a winding up ranking as capital see *Commercial Securities Ltd v IRC* [1953] TR 329; and INCOME TAXATION; SETTLEMENTS. As to a company's articles of association see COMPANIES vol 14 (2009) PARA 228 et seq.

5 *British Eagle International Air Lines Ltd v Compagnie Nationale Air France* [1975] 2 All ER 390, [1975] 1 WLR 758, HL; *Money Markets International Stockbrokers Ltd (in liquidation) v London Stock Exchange* [2001] 2 All ER (Comm) 344, [2001] 4 All ER 223 (transfer of a member firm's share in the stock exchange on insolvency held not to be void); *North Atlantic Insurance Co Ltd v Nationwide General Insurance Co Ltd* [2004] EWCA Civ 423, [2004] 2 All ER (Comm) 351 (purported transfer of insurers' interest in reinsurance rights and recoveries held to be void); *Frase v Oystertec plc* [2003] EWHC 2787, [2004] BPIR 486 (principle applied where no insolvency proceedings in existence); cf *Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd* [1985] Ch 207, [1985] 1 All ER 155. Provisions for the contractual subordination of debts in the event of a winding up are, however, valid: *Re Maxwell Communications Corp plc (No 3)* [1994] 1 BCLC 1, sub nom *Re Maxwell Communications Corp plc (No 2)* [1993] BCC 369.

6 In the Insolvency Rules 1986, SI 1986/1925, rr 4.180-4.186 (as amended): see paras 813-839 ante. A liquidator will not be allowed to make final distributions where there is a late claim by a creditor if it would be unjust to do so: *Re R-R Realisations Ltd (formerly Rolls-Royce Ltd)* [1980] 1 All ER 1019, [1980] 1 WLR 805.

7 Insolvency Rules 1986, SI 1986/1925, r 4.182A(1) (r 4.182A added by SI 1987/1919).

8 Insolvency Rules 1986, SI 1986/1925, r 4.182A(2) (as added: see note 7 supra).

9 Ibid r 4.182A(3) (as added: see note 7 supra).

10 Ibid r 4.182A(4) (as added: see note 7 supra).

11 le the notice given under *ibid* r 4.182A(1) (as added): see the text and note 7 *supra*.

12 *Ibid* r 4.182A(5), (6) (as added: see note 7 *supra*).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1009 How assets are to be applied

TEXT AND NOTES--Regulations may make provision for and in connection with the distribution, on the winding up of a community interest company, of any assets of the company which remain after satisfaction of the company's liabilities: Companies (Audit, Investigations and Community Enterprise) Act 2004 s 31(1). The regulations may, in particular, amend or modify the operation of any enactment or instrument: s 31(2). See the Community Interest Company Regulations 2005, SI 2005/1788, reg 23 (amended by SI 2009/1942). As to community enterprise companies see COMPANIES vol 14 (2009) PARA 82 *et seq*.

NOTE 2--See now the Insolvency Act 1986 s 176ZA (added by the Companies Act 2006 s 1282(1)) under which property subject to a floating charge may, where necessary, be used to fund the general expenses of winding up in priority to the floating charge holder and to any preferential creditors to be paid out of that property.

NOTE 3--In the case of structure investment vehicles, the fundamental principle of *pari passu* distribution on insolvency is to be followed when determining asset distribution but only on a specific interpretation of the contractual provision in question: *Re Sigma Finance Corp*n [2009] UKSC 2, [2010] 1 All ER 571.

NOTE 5--See also *Re SSSL Realisations (2002) Ltd (in liquidation)*; *Re Save Group plc (in liquidation)* [2006] EWCA Civ 7, [2006] Ch 610; *Perpetual Trustee co Ltd v BNY Corporate Trustee Services Ltd*; *Butters v BBC Worldwide Ltd* [2009] EWCA Civ 1160, [2010] BPIR 174.

TEXT AND NOTE 7--SI 1986/1925 r 4.182A(1) substituted: SI 2009/642.

TEXT AND NOTE 8--SI 1986/1925 r 4.182A(2) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(10) DISTRIBUTION OF ASSETS/1010. Unclaimed or undistributed assets; investment of assets.

1010. Unclaimed or undistributed assets; investment of assets.

In the case of a voluntary winding up, the liquidator may make payments into the Insolvency Services Account¹ to the credit of the company². Where in a voluntary winding up a liquidator pays any unclaimed dividend into the Insolvency Services Account, he must at the same time give notice to the Secretary of State, on a form obtainable from the Department of Trade and Industry or one that is substantially similar, of the name and address of the person to whom the dividend is payable and the amount of the dividend³.

In the case of a voluntary winding up, where the liquidator requires to make payments out of any money standing to the credit of the company in the Insolvency Services Account in respect of the expenses of the winding up, he must apply to the Secretary of State who may either authorise payment to the liquidator of the sum required by him, or may direct payment instruments⁴ to be issued to the liquidator for delivery by him to the persons to whom the payments are to be made⁵.

In the case of a voluntary winding up, where the liquidator requires to make payments out of any money standing to the credit of the company in the Insolvency Services Account by way of distribution, he must apply in writing to the Secretary of State who may either authorise payment to the liquidator of the sum required by him, or may direct payment instruments to be issued to the liquidator for delivery by him to the persons to whom the payments are to be made⁶.

The rules relating to unclaimed funds and dividends⁷ apply in a voluntary winding up as in the case of a winding up by the court⁸; as do the rules relating to the investment or other handling of funds and payment of interest⁹, with the following additions. Any money invested or deposited at interest by a liquidator is deemed to be money under his control, and, when such money forms part of the balance of funds in his hands or under his control relating to the company required to be paid into the Insolvency Services Account¹⁰, the liquidator must realise the investment or withdraw the deposit and must pay the proceeds into that account, unless the money is invested in government securities, in which case such securities may, with the permission of the Secretary of State, be transferred to the control of the Secretary of State instead of being forthwith realised and the proceeds paid into the Insolvency Services Account¹¹. Where any of the money represented by the securities so transferred to the control of the Secretary of State is, in the opinion of the liquidator, required for the immediate purposes of the winding up, he may request the Secretary of State to raise such sums as may be required by the sale of such of those securities as may be necessary; and such request is sufficient authority to the Secretary of State for the sale and the Secretary of State must pay the proceeds of the realisation into the Insolvency Services Account¹² and deal with them in the same way as other money paid into that account may be dealt with¹³.

¹ As to the Insolvency Services Account see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 26; and para 554 ante.

² Insolvency Regulations 1994, SI 1994/2507, reg 5(2) (substituted by SI 2004/472). As to the procedure on payment in see the Insolvency Regulations 1994, SI 1994/2507, reg 5(3), (4) (as substituted and amended); and para 603 ante.

3 Ibid reg 5(5). As to the Secretary of State see para 11 note 10 ante As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

4 For the meaning of 'payment instrument' see para 604 note 3 ante.

5 Insolvency Regulations 1994, SI 1994/2507, reg 7(3). As to the procedure on payment out see reg 7(4); and para 604 ante.

6 Ibid reg 8(3). In respect of such an application, the Secretary of State, if requested to do so by the liquidator, may, at his discretion, as an alternative to the issue of payment instruments, make payment by electronic transfer to the persons to whom the liquidator would otherwise deliver payment instruments, or make the payment which is the subject of the application to the liquidator by electronic transfer: reg 8(3A) (added by SI 2000/485). As to the procedure on payment out see the Insolvency Regulations 1994, SI 1994/2507, reg 8(4) (as amended); and para 841 ante.

7 See paras 607-608 ante.

8 Insolvency Regulations 1994, SI 1994/2507, regs 18, 32.

9 le ibid reg 9 (as amended): see para 606 ante.

10 le under ibid reg 5 (as amended): see the text and notes 1-3 supra.

11 Ibid reg 9(8)(a).

12 le in accordance with ibid reg 9(7): see para 606 ante.

13 Ibid reg 9(8)(b).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1010 Unclaimed or undistributed assets; investment of assets

NOTE 3--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1994/2507 reg 3(3) (amended by SI 2007/3224).

NOTE 8--SI 1994/2507 reg 18 substituted: see PARA 607.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(10) DISTRIBUTION OF ASSETS/1011. Liquidator to provide information to Secretary of State.

1011. Liquidator to provide information to Secretary of State.

In the case of a voluntary winding up¹, a liquidator or former liquidator must², within 14 days of a request by the Secretary of State, give the Secretary of State particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or dividends or other sums due to any person as a member or former member of the company and such other particulars as the Secretary of State may require for the purpose of ascertaining or getting in any money payable into the Insolvency Services Account³. Such particulars must, if the Secretary of State so requires, be certified by the liquidator, or former liquidator, as the case may be⁴.

1 Ie whether in a creditors' or members' voluntary winding up.

2 Ie whether the winding up has been concluded under the Insolvency Rules 1986, SI 1986/1925, r 4.223 (see para 1005 ante) or not.

3 Insolvency Regulations 1994, SI 1994/2507, reg 17(1). As to the Insolvency Services Account see para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 26. As to the Secretary of State see para 11 note 10 ante.

4 Ibid reg 17(2).

UPDATE

939-1024 Voluntary Winding Up

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(11) APPLICATIONS TO THE COURT/1012. Powers of the court.

(11) APPLICATIONS TO THE COURT

1012. Powers of the court.

The liquidator¹ or any contributory or creditor² may apply³ to the court⁴ to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by it⁵. If satisfied that the determination of the question or the required exercise of power will be just and beneficial, the court may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just⁶. Applications may be transferred to another court having winding-up jurisdiction⁷.

The court will not deal with an application under these provisions to set aside a contract between the company and third parties⁸.

1 The liquidator may apply for the determination of any question fairly arising in the liquidation (*Re Union Bank of Kingston-upon-Hull* (1880) 13 ChD 808); but the practice is only to answer specific questions. Claims for damages will not be decided on such an application: *Crawford v McCulloch* 1909 SC 1063, Ct of Sess. A former liquidator has no locus standi to apply under the Insolvency Act 1986 s 112: *Re AJ Adams (Builders) Ltd, Re Autonational Extended Warranties Ltd* [1991] BCLC 359, [1991] BCC 62. The court's jurisdiction to make an order for private examination under the Insolvency Act 1986 s 236 (see para 679 ante) is the exercise of a power rather than determination of a question; hence a creditor cannot apply under s 112 for an order for private examination: *Re James McHale Automobiles Ltd* [1997] 1 BCLC 273, [1997] BCC 202.

2 'Creditor' includes secured creditor (eg a debenture holder): *Re Alfred Priestman & Co (1929) Ltd* [1936] 2 All ER 1340. The question whether a post-liquidation creditor may apply was left undecided in *Re Movitex Ltd* [1992] 2 All ER 264, [1992] 1 WLR 303, CA.

3 As to the making of applications see para 1055 et seq post. A liquidator of a group of companies in voluntary liquidation may apply for directions in each winding up by a single application: *Re William Pickles plc (in liquidation)* [1996] 1 BCLC 681, [1996] BCC 408.

4 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq ante.

5 Insolvency Act 1986 s 112(1); and see *Rance's Case* (1870) 6 Ch App 104 at 114, 115.

6 Insolvency Act 1986 s 112(2). A copy of an order so made staying the proceedings in the winding up must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who must enter it in his records relating to the company: s 112(3). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq. It seems that there is no jurisdiction under this provision to direct an official receiver to furnish to the court a report under s 147(2) (see para 902 ante): *Re Serene Shoes Ltd* [1958] 3 All ER 316, [1958] 1 WLR 1087. An application by the liquidator for liberty to make a final distribution in a voluntary winding up where last-minute claims by creditors had been made was refused on the grounds that, in all the circumstances, it was not just to make the order: *Re R-R Realisations Ltd (formerly Rolls-Royce Ltd)* [1980] 1 All ER 1019, [1980] 1 WLR 805.

The liquidator may, in a suitable case, seek directions from the court as to the rights of claimants to funds in his hands: see *Re Westdock Realisations Ltd* [1988] BCLC 354, 4 BCC 192 (where the court's discretion as to costs on application for directions is considered); *Re Exchange Securities and Commodities Ltd* [1988] Ch 46, [1987] 2 All ER 272; cf *Re Stetzel Thomson & Co Ltd* (1988) 4 BCC 74. As to the payment of the liquidator's costs and remuneration out of trust funds where the company has no other assets see *Re Berkeley Applegate (Investment Consultants) Ltd (No 2)*, *Harris v Conway* [1989] Ch 32, [1988] 3 All ER 71; *Re Local London Residential Ltd* [2004] EWHC 114 (Ch), [2004] BPIR 599.

7 As to the courts having winding-up jurisdiction and the power to transfer see para 438 et seq ante.

8 *Re Centrifugal Butter Co Ltd* [1913] 1 Ch 188 (where the court was doubtful whether it had jurisdiction to set aside a contract on an application under the provision, but in any case was unwilling to exercise such jurisdiction).

UPDATE

939-1024 Voluntary Winding Up

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(11) APPLICATIONS TO THE COURT/1013. Misfeasance proceedings.

1013. Misfeasance proceedings.

Where it appears that promoters, directors or other officers of the company have been guilty of misfeasance, proceedings may be taken as in the case of a winding up by the court¹.

¹ See the Insolvency Act 1986 s 212 (as amended); and para 688 et seq ante.

UPDATE

939-1024 Voluntary Winding Up

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(11) APPLICATIONS TO THE COURT/1014. Power to stay or restrain proceedings.

1014. Power to stay or restrain proceedings.

The passing of a resolution for voluntary winding up does not operate as a stay of proceedings, or invalidate executions or distresses, or prevent claims or other proceedings being brought or continued against the company¹. However, the court² has jurisdiction to stay any claim³, proceeding, attachment, distress or execution⁴ against the company, its estate or effects upon such terms as it thinks fit⁵. Unless exceptional circumstances exist, the court will usually accede to an application to stay an attachment or execution for the purpose of securing the distribution of the assets *pari passu*⁶.

The onus lies on the liquidator of showing that a claim against the company should be stayed. The court has a discretion, and will not stay the claim where there is a dispute as to the liability; but, if the liability is admitted and there is a mere dispute as to the amount, the matter should be determined in the liquidation⁷. Where a claim is pending against the company when the winding up commences⁸, and the liquidator disputes the claim and is unsuccessful at the trial, the claimant is entitled to have the costs paid in full out of the company's assets⁹.

The court will usually restrain a landlord from distraining for rent where he can prove for the rent¹⁰, but not where the liquidator has retained possession for the purposes of the company¹¹. In such a case, the landlord's claim for rent and breach of covenant is payable in full¹².

The court has power to make an order staying all proceedings in the winding up¹³.

1 As to the effect of an order for winding up by the court see paras 490, 893 ante.

2 In the case of a claim, the court is the one in which it is pending, as in *Currie v Consolidated Kent Collieries Corp Ltd* [1906] 1 KB 134, CA. In the case of a distress, the court is the one having jurisdiction to wind up the company, as in *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA.

3 *Re Keynsham Co* (1863) 33 Beav 123; *Harrison v Mortgage Insurance Corp Ltd* (1893) 10 TLR 141; and see *Re Hermann Loog Ltd* (1887) 36 ChD 502. See also *The Zafiro, John Carlborn & Co v Owners of SS Zafiro* [1960] P1, [1959] 2 All ER 537 (action by secured creditor not stayed).

4 *Re Sabloniere Hotel Co* (1866) LR 3 Eq 74; *Re Thurso New Gas Co* (1889) 42 ChD 486; *Westbury v Twigg & Co* [1892] 1 QB 77; *Re Roundwood Colliery Co* [1897] 1 Ch 373 at 381, CA. As to the terms on which an execution will be stayed see *Re Poole Firebrick and Blue Clay Co* (1873) LR 17 Eq 268. A creditor will be allowed to complete distress commenced before the winding up unless it is inequitable to do so: *Herbert Berry Associates Ltd v IRC* [1978] 1 All ER 161, [1977] 1 WLR 1437, HL; *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267.

5 Cf the power to stay proceedings after the presentation of a winding-up petition: see paras 887, 1012 text and note 5 ante.

6 *Anglo-Baltic and Mediterranean Bank v Barber & Co* [1924] 2 KB 410, CA. As to statutory provision by which a creditor cannot retain the benefit of an execution or attachment commenced, but not completed, before a winding up, except in so far as the court sets aside the liquidator's rights in the creditor's favour, see para 882 ante. A stay was refused in the case of an execution commenced after the beginning of the winding up where the exceptional circumstances were that the company was solvent and there were no other creditors: *Gerard v Worth of Paris Ltd* [1936] 2 All ER 905, CA. The view expressed in that case at 909, that the liquidator's banking account could be attached in garnishee proceedings by the judgment creditor of the company, was not followed in *Lancaster Motor Co (London) Ltd v Bremith Ltd* [1941] 1 KB 675, [1941] 2 All ER 11, CA. Distress (not for a preferential debt) by the Crown was stayed in *Re Margot Bywaters Ltd* [1942] Ch 121, [1941] 3 All ER 471. A stay was refused where a government department instituted proceedings in the magistrates' court against a company in respect of a statutory debt because the real purpose of the liquidator's application was to protect the directors of the company: see *Re J Burrows (Leeds) Ltd* [1982] 2 All ER 882, [1982] 1 WLR 1177. Where the

proceedings concerned the entitlement of the claimant to storage charges incurred after the commencement of the liquidation, and hence which might have been payable as an expense of the liquidation, a stay would not be imposed on such proceedings as there is no contravention of the *pari passu* principle: *Re Dicksmith Manufacturing Ltd* [1999] 2 BCLC 686.

7 *Currie v Consolidated Kent Collieries Corp Ltd* [1906] 1 KB 134, CA. Cf *Cook v X Chair Patents Co Ltd* [1959] 3 All ER 906, [1960] 1 WLR 60 (action for damages for breach of service agreement allowed to proceed as no advantage to be gained by a stay). Where a creditor has proved in the winding up, he cannot also bring an action for adjudication of his claim, but should appeal from the liquidator's decision: *Craven v Blackpool Greyhound Stadium and Racecourse Ltd* [1936] 3 All ER 513, CA.

8 As to when the winding up commences see para 996 ante.

9 *Re Wenborn & Co* [1905] 1 Ch 413; and see para 594 ante.

10 *Re Harpur's Cycle Fittings Co* [1900] 2 Ch 731; cf *Re Carriage Co-operative Supply Association, ex p Clemence* (1883) 23 ChD 154.

11 Cf *Re Silkstone and Dodworth Coal and Iron Co* (1881) 17 ChD 158 at 160. The same rule applies to rates: *Re National Arms and Ammunition Co* (1885) 28 ChD 474 at 478, CA. Similarly, a liquidator may be liable in respect of rates where he has retained possession of the rateable premises for the purposes of the liquidation: *Re Nolton Business Centres Ltd, Eliades v City of London Common Council* [1996] 1 BCLC 400; and see para 892 note 3 ante.

12 *Re Levi & Co* [1919] 1 Ch 416.

13 *Re The Steamship 'Titian' Co Ltd* (1888) 58 LT 178; *Re Schanschieff Electric Battery Syndicate Ltd* [1888] WN 166; *Re SS Chigwell Ltd* (1888) 4 TLR 308; *Re Condes Co of Chili Ltd* (1892) 36 Sol Jo 593; *Re Stephen Walters & Sons Ltd* (1926) 70 Sol Jo 953; and see para 902 note 2 ante.

UPDATE

939-1024 Voluntary Winding Up

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(12) PROSECUTION OF DELINQUENT DIRECTORS AND OTHERS; PERSONAL LIABILITY; DISQUALIFICATION ORDERS

1015. Report to the Secretary of State.

If it appears to the liquidator in the course of a voluntary winding up that any past or present officer¹ of the company or any member² of the company has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator must forthwith report the matter to the Secretary of State and furnish him with such information, and give to him such access to and facilities for inspecting and taking copies of documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require³.

1 For the meaning of 'officer' see para 72 note 8 ante.

2 For the meaning of 'member' see para 72 note 9 ante.

3 Insolvency Act 1986 s 218(4) (amended by Insolvency Act 2000 s 10). As to reports or references to the Secretary of State in the case of a winding up by the court see paras 924, 926 ante. As to the Secretary of State see para 11 note 10 ante. In the case of a winding up in relation to a limited liability partnership, these provisions apply to the partnership's officers or members: see s 218(4); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(12) PROSECUTION OF DELINQUENT DIRECTORS AND OTHERS; PERSONAL LIABILITY; DISQUALIFICATION ORDERS/1016. Powers of investigation of the Secretary of State.

1016. Powers of investigation of the Secretary of State.

Where a report is made to the Secretary of State¹, he may, for the purposes of investigating the matter reported to him and such other matters relating to the affairs of the company as may appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed² to investigate a company's affairs³.

1 He under the Insolvency Act 1986 s 218(4) (as amended): see para 1015 ante. As to the Secretary of State see para 11 note 10 ante.

2 He under the Companies Act 1985 s 431 (as amended) (see para 927 ante) or s 432 (as amended) (see para 928 ante).

3 Insolvency Act 1986 s 218(5) (substituted by the Insolvency Act 2000 s 10).

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1016 Powers of investigation of the Secretary of State

TEXT AND NOTES 1-3--Insolvency Act 1986 s 218(5) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(12) PROSECUTION OF DELINQUENT DIRECTORS AND OTHERS; PERSONAL LIABILITY; DISQUALIFICATION ORDERS/1017. Liquidator's failure to report to the Secretary of State.

1017. Liquidator's failure to report to the Secretary of State.

If it appears to the court in the course of a voluntary winding up that any past or present officer¹ of the company or any member² of it has been guilty of any offence in relation to the company for which he is criminally liable, and that no report with respect to the matter has been made by the liquidator to the Secretary of State³, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report; and, on a report being made accordingly, the statutory provisions relating to prosecutions⁴ have effect as though the report had been made by the liquidator⁵.

1 For the meaning of 'officer' see para 72 note 8 ante.

2 For the meaning of 'member' see para 72 note 9 ante.

3 I.e. under the Insolvency Act 1986 s 218(4) (as amended): see para 1015 ante. As to the Secretary of State see para 11 note 10 ante.

4 I.e. ibid s 218 (as amended): see paras 504, 507 ante.

5 Ibid s 218(6) (amended by the Insolvency Act 2000 ss 10, 15, Sch 5). In the case of a winding up in relation to a limited liability partnership, these provisions apply to the partnership's officers or members: see s 218(6) (as so amended); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(12) PROSECUTION OF DELINQUENT DIRECTORS AND OTHERS; PERSONAL LIABILITY; DISQUALIFICATION ORDERS/1018. Duty to assist and institution of proceedings.

1018. Duty to assist and institution of proceedings.

For the purposes of an investigation by the Secretary of State¹, any obligation imposed on a person by any provision of the Companies Act 1985 to produce documents or give information to, or otherwise to assist, inspectors appointed to investigate the company's affairs is an obligation similarly to assist the Secretary of State in his investigation². An answer given by a person to a question put to him in exercise of the powers so given to the Secretary of State to investigate a company's affairs may be used in evidence against that person³. However, in criminal proceedings in which that person is charged with certain offences⁴ no evidence relating to the answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person⁵.

The provisions with regard to the institution of proceedings by the Director of Public Prosecutions⁶ or the Secretary of State, and the duty of the liquidator and others to render to the Director of Public Prosecutions or the Secretary of State (as the case may be) assistance, which apply when a reference is made to the Director of Public Prosecutions in a winding up by the court also apply where a report is made to him⁷ in a voluntary winding up⁸.

¹ See under the Insolvency Act 1986 s 218(5) (as amended): see para 1016 ante. As to the Secretary of State see para 11 note 10 ante.

² Ibid s 219(1) (amended by the Insolvency Act 2000 s 10).

³ Insolvency Act 1986 s 219(2).

⁴ See any offence other than an offence under the Perjury Act 1911 s 2 or s 5 (as amended) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath): Insolvency Act 1986 s 219(2B) (added by the Insolvency Act 1986 s 11). See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 716-717.

⁵ Insolvency Act 1986 s 219(2A) (added by the Insolvency Act 2000 s 11).

⁶ As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq.

⁷ See paras 1015, 1017 ante.

⁸ See the Insolvency Act 1986 s 219(3), (4) (as amended); and para 926 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1018 Duty to assist and institution of proceedings

NOTES 1, 2--Insolvency Act 1986 s 219(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(12) PROSECUTION OF DELINQUENT DIRECTORS AND OTHERS; PERSONAL LIABILITY; DISQUALIFICATION ORDERS/1019. Offences, disqualification and personal liability of directors and others.

1019. Offences, disqualification and personal liability of directors and others.

The provisions relating to offences by officers¹, disqualification of directors², fraudulent and wrongful trading³, and the restrictions on the re-use of company names⁴, apply to companies in voluntary liquidation as in the case of companies being wound up by the court.

1 See the Insolvency Act 1986 ss 206-211 (as amended); and paras 905-910 ante.

2 See the Company Directors Disqualification Act 1986; and para 1107 et seq post.

3 See the Insolvency Act 1986 ss 213-215; the Companies Act 1985 s 458; and paras 911-915 ante.

4 See the Insolvency Act 1986 ss 216, 217; and paras 916-922 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(13) DISSOLUTION OF THE COMPANY/1020. Meetings of company and of creditors.

(13) DISSOLUTION OF THE COMPANY

1020. Meetings of company and of creditors.

In the case of every voluntary winding up, as soon as the company's affairs are fully wound up¹, the liquidator must make up an account of the winding up, showing how it has been conducted and how the company's property has been disposed of². The account of the winding up must also include a statement as to the amount paid to unsecured creditors by reason of the prescribed part of the company's net assets being made available to pay unsecured debts³. He must then call a general meeting of the company for the purpose of laying before it the account and giving an explanation of it⁴. In the case of a creditors' voluntary winding up, he must also call a meeting of the creditors for the same purpose⁵.

Meetings must be called by advertisement in the Gazette⁶, specifying the time, place and object, and published at least one month before the meeting⁷.

1 He fully wound up so far as the liquidator is aware: *Re Cornish Manures Ltd* [1967] 2 All ER 875, [1967] 1 WLR 807.

2 Insolvency Act 1986 ss 94(1), 106(1).

3 He under the Insolvency Act 1986 s 176A (as added): Insolvency Rules 1986, SI 1986/1925, r 4.126(4) (added by SI 2003/1730).

4 Insolvency Act 1986 ss 94(1), 106(1). In the case of a winding up in relation to a limited liability partnership, the liquidator must summon a meeting of the members of the partnership (see ss 94(1), 106(1); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post), and the provisions of the Insolvency Act 1986 s 92(3), (4) (as modified) (see para 980 ante) apply for those purposes as they apply for the purposes of s 92 (see ss 94(5A), 106(5A); and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, Sch 3). For the meaning of 'limited liability partnership' see para 71 note 3 ante.

5 Insolvency Act 1986 s 106(1). As to the prescribed form of notice of meeting see the Insolvency Rules 1986, SI 1986/1925, rr 4.126, 12.7, Sch 4 Form 4.22. As to the rules relating to meetings see para 951 ante. The liquidator must give at least 28 days' notice of the final meeting of creditors; and such notice must be sent to all creditors who have proved their debts: r 4.126(1). At the final meeting, the creditors may question the liquidator with respect to any matter contained in the account and may resolve against the liquidator having his release: r 4.126(2) (amended by SI 2003/1730). Where the creditors have so resolved, he must obtain his release from the Secretary of State; and the Insolvency Rules 1986, SI 1986/1925, r 4.122 (see para 992 ante) applies accordingly: r 4.126(3). As to the Secretary of State see para 11 note 10 ante.

6 For the meaning of 'the Gazette' see para 1048 note 1 ante.

7 Insolvency Act 1986 ss 94(2), 106(2). As to the penalty for failure to call a meeting see para 1022 post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1020 Meetings of company and of creditors

TEXT AND NOTES--SI 1986/1925 r 4.126(1A)-(1E), (5)-(7) added: SI 2010/686. See SI 1986/1925 r 4.49D (final report to creditors), r 4.49G (other distributions to members in specie), and r 4.126A (final meeting in members' voluntary liquidation) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(13) DISSOLUTION OF THE COMPANY/1021. Returns as to meetings.

1021. Returns as to meetings.

Within one week after the meeting or, in the case of a creditors' voluntary winding up, if the meetings are not held on the same date, after the date of the later meeting, the liquidator must send to the registrar of companies a copy of the account and make a return to him of the holding of the meeting or meetings and of its date or their dates¹; and, if the copy is not so sent or the return is not so made, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum². If a quorum is not present at any such meeting, the liquidator must, in lieu of the above-mentioned return, make a return that the meeting was duly summoned and that no quorum was present; and, upon such a return being made, the provisions as to the making of the return are deemed to have been complied with³.

On receiving the account and either of the above returns in respect of each meeting, the registrar must forthwith register them⁴, and cause notice of his receipt of the return to be published in the Gazette⁵. On the expiration of three months from the registration of the return, the company is deemed to be dissolved⁶; but, on the application of the liquidator or any other person who appears to the court to be interested, the court⁷ may make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit⁸.

1 Insolvency Act 1986 ss 94(3), (4). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

2 Ibid ss 106(3), (4), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to the prescribed form of return see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 4.71 (as amended) (members' voluntary winding up), Form 4.72 (as amended) (creditors' voluntary winding up).

3 Insolvency Act 1986 ss 94(5), 106(5).

4 Ibid s 201(1), (2).

5 See the Companies Act 1985 s 711(1)(r).

6 Insolvency Act 1986 s 201(1), (2).

7 For the meaning of 'the court' see para 4 ante. As to the courts having winding-up jurisdiction see para 438 et seq ante.

8 Insolvency Act 1986 s 201(1), (3). As to the making of applications see para 1055 et seq post; as to the delivery of the order for registration see para 1022 post; and as to the penalty for non-compliance see para 1022 post.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1021 Returns as to meetings

NOTE 2--SI 1986/1925 Sch 4, Forms 4.71, 4.72 amended: SI 2009/642.

NOTE 5--1985 Act s 711(1) replaced with amendments: Companies Act 2006 s 1064(1)-(3) (not yet in force), ss 1077, 1078(2), (3).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(13) DISSOLUTION OF THE COMPANY/1022. Penalties.

1022. Penalties.

It is the duty of the person on whose application an order deferring dissolution is made¹, within seven days after the making of the order, to deliver to the registrar of companies an office copy of the order for registration; and, if he fails to do so, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum².

If the liquidator fails to call a general meeting of the company or a meeting of creditors as required³, he is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum⁴.

1 Ie under the Insolvency Act 1986 s 201: see para 1021 text and note 8 ante.

2 Ibid ss 201(1), (4), 430, Sch 10. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante. As to the effect of dissolution see para 929 et seq ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 Ie by ibid s 94(1) or s 106: see para 1020 ante. In the case of a winding up in relation to a limited liability partnership, the liquidator is instead required under those provisions to summon a meeting of the members of the partnership (see para 1020 note 4 ante), but still commits an offence under s 94(1) or s 106 if he fails to do so: see ss 94(6), 106(6); the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5, Sch 3; and para 1308 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante.

4 Insolvency Act 1986 ss 94(6), 106(6), 430, Sch 10.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1022 Penalties

NOTE 2--Insolvency Act 1986 Sch 10 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(13) DISSOLUTION OF THE COMPANY/1023. Winding-up order after dissolution.

1023. Winding-up order after dissolution.

Subject to certain conditions, the court may after the dissolution make an order declaring the dissolution to have been void¹, but, until this has been done, the court has no jurisdiction after dissolution to make a winding-up order in respect of a company which has been voluntarily wound up and dissolved².

¹ See the Companies Act 1985 s 651 (as amended); and para 937 ante.

² *Re Pinto Silver Mining Co* (1878) 8 ChD 273 at 282, CA; *Re London and Caledonian Marine Insurance Co* (1879) 11 ChD 140, CA (cases under the Companies Act 1862). Cf para 937 note 5 ante.

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/9. VOLUNTARY WINDING UP/(14) SUPERSEDING VOLUNTARY WINDING UP/1024. Winding up by the court.

(14) SUPERSEDING VOLUNTARY WINDING UP

1024. Winding up by the court.

The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the court; but, in the case of an application by a contributory, the court must be satisfied that the contributories' rights will be prejudiced by a voluntary winding up¹. Where a voluntary winding up has preceded an order for winding up by the court, then, unless the court on proof of fraud or mistake directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken².

¹ Insolvency Act 1986 s 116. See also paras 453, 455 ante. In the case of a creditor, s 116 applies whether his debt accrued before or after the commencement of the winding up: see para 453 text and note 3 ante.

UPDATE

UPDATE

939-1024 Voluntary Winding Up

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(1) ENFORCEMENT PROCEDURES/1025.
Enforcement of court orders.

10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS

(1) ENFORCEMENT PROCEDURES

1025. Enforcement of court orders.

In any insolvency proceedings¹, orders of the court may be enforced in the same manner as a judgment to the same effect²; and every court in England and Wales having winding-up jurisdiction has, for the purposes of that jurisdiction, all the powers of the High Court³.

Where an order in insolvency proceedings is made, or any process is issued, by a county court ('the primary court'), the order or process may be enforced, executed and dealt with by any other county court ('the secondary court'), as if it had been made or issued for the enforcement of a judgment or order to the same effect made by the secondary court; and this provision applies whether or not the secondary court has jurisdiction to take insolvency proceedings⁴.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.19(1). As to orders of the High Court see CPR Pt 70; and CIVIL PROCEDURE vol 12 (2009) PARA 1224 et seq. An application to make an order of the House of Lords an order of the Chancery Division should be made to the court of first instance: *British Dynamite Co v Krebs* (1879) 11 ChD 448. As to the prescribed form of warrant for committal for contempt see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 7.17. As to contempt of court generally see CONTEMPT OF COURT.

3 See the Insolvency Act 1986 s 117(5); and para 438 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 7.19(2). As to enforcing orders in county courts see CPR Pt 70; and CIVIL PROCEDURE vol 12 (2009) PARA 1224 et seq.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1025 Enforcement of court orders

NOTES 2, 4--SI 1986/1925 r 7.19(3) added, Sch 4 Form 7.17 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(1) ENFORCEMENT PROCEDURES/1026. Orders enforcing obligations.

1026. Orders enforcing obligations.

The court may, on application by the competent person¹, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with the provisions in respect of:

- 1329 (1) a person's duty to submit a statement of affairs in administration², administrative receivership³ or winding up by the court⁴;
- 1330 (2) the liquidator's duty to furnish information, books, papers etc to the official receiver⁵;
- 1331 (3) the duty⁶ of various persons to co-operate with office-holders⁷.

Any such order of the court may provide that all costs of and incidental to the application for it be borne by the person against whom the order is made⁸.

1 For these purposes, the competent person is: (1) under the Insolvency Act 1986 Sch B1 para 47 (as added) (see para 266 ante), the administrator; (2) under s 47 (see para 403 et seq ante), the administrative receiver; (3) under s 131 (see para 520 et seq ante) or s 143(2) (see para 576 ante), the official receiver; and (4) under s 235 (as amended) (see para 678 ante), the official receiver, the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be: Insolvency Rules 1986, SI 1986/1925, r 7.20(2) (substituted by SI 2003/1730). As to the official receiver see para 503 et seq ante.

2 Ie under the Insolvency Act 1986 Sch B1 para 47 (as added) (see para 266 ante).

3 Ie under ibid s 47 (see para 403 et seq ante).

4 Insolvency Rules 1986, SI 1986/1925, r 7.20(1)(a) (amended by SI 2003/1730). As to the duty to submit a statement of affairs in a winding up see the Insolvency Act 1986 s 131; and para 520 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 7.20(1)(b). For the liquidator's duty to furnish information, books, papers etc to the official receiver see the Insolvency Act 1986 s 143(2); and para 576 et seq ante.

6 Ie under ibid s 235 (as amended). As to winding up by the court see para 678 ante; and as to voluntary winding up see para 962 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 7.20(1)(c).

8 Ibid r 7.20(3). Where a director has failed to comply with his duties to the official receiver, the correct procedure is to apply to enforce such obligations under r 7.20 (as amended) in the first instance, rather than to apply for a public examination as a means of enforcing the obligations: *Re Wallace Smith Trust Co Ltd* [1992] BCC 707.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(1) ENFORCEMENT PROCEDURES/1027. Warrants.

1027. Warrants.

A warrant issued by the court under any provision of the Insolvency Act 1986 must be addressed to such officer of the High Court or of a county court, whether or not having jurisdiction in insolvency proceedings¹, as the warrant specifies, or to any constable².

¹ For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

² Insolvency Rules 1986, SI 1986/1925, r 7.21(1). As to the prescribed officer to whom a warrant may be issued under the Insolvency Act 1986 s 134(2) (failure to attend public examination) and s 236(5) (failure to attend private examination) and the special provisions relating to proceedings under such warrants (including the prescribed forms of such warrants) see paras 543, 685 ante. As to the prescribed form of warrant for committal for contempt see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Form 7.17; and as to execution of warrants throughout the United Kingdom see para 1029 post. As to the prescribed forms of order of discharge from custody under the Insolvency Act 1986 see the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 Forms 7.14, Form 7.18. As to contempt of court generally see CONTEMPT OF COURT.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1027 Warrants

NOTE 2--SI 1986/1925 r 7.21 amended: SI 2009/642. SI 1986/1925 Sch 4 Forms 7.14, 7.17, 7.18 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(1) ENFORCEMENT PROCEDURES/1028. Execution of warrants outside court's district.

1028. Execution of warrants outside court's district.

Where a warrant for a person's arrest has been issued in insolvency proceedings¹ by a county court ('the primary court') and is addressed to another county court ('the secondary court') for execution in its district², the secondary court may send the warrant to the registrar of any other county court, whether or not having jurisdiction to take insolvency proceedings, in whose district the person to be arrested is or is believed to be, with a notice to the effect that the warrant is transmitted to that court³ for execution in its district at the request of the primary court⁴. The court receiving a warrant so transmitted by the secondary court must apply its seal to the warrant, and secure that all such steps are taken for its execution as would be appropriate in the case of a warrant issued by itself⁵.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 As to the prescribed form of warrant to the registrar of a court in whose district a person against whom a warrant of arrest has been issued is believed to be see the Insolvency Rules 1986, SI 1986/1925, rr 7.24, 12.7, Sch 4 Form 7.10.

3 *Ie* under *ibid* r 7.24.

4 *Ibid* r 7.24(1), (2). As to the prescribed form of indorsement of warrant of arrest issued by the court to which the same has been sent for execution by the court which originally issued it see Sch 4 Form 7.11.

5 *Ibid* r 7.24(3). As to execution of warrants see para 1029 post.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1028 Execution of warrants outside court's district

NOTES 2, 4--SI 1986/1925 Sch 4 Forms 7.10, 7.11 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(2) CO-OPERATION BETWEEN COURTS/1029. Co-operation between courts exercising jurisdiction in relation to insolvency.

(2) CO-OPERATION BETWEEN COURTS

1029. Co-operation between courts exercising jurisdiction in relation to insolvency.

An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law¹ must² be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part³. Without prejudice to the provisions described below, this duty does not, however, require a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom⁴.

The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom must assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory⁵. For these purposes, a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction; and, in exercising its discretion under this provision, a court must have regard in particular to the rules of private international law⁶.

The provisions⁷ relating to the execution of warrants of arrest throughout the United Kingdom apply to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as they apply to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence⁸.

1 For these purposes, 'insolvency law' means:

- 40 (1) in relation to England and Wales, provision extending to England and Wales and made by or under the Insolvency Act 1986 or the Company Directors Disqualification Act 1986 s 1A (as added), ss 6-10 (as amended), ss 12-15 (as amended), ss 19(1)(c), 20 (as amended), Sch 1 (as amended), and ss 1-17 as they apply for the purposes of those provisions (see para 1107 et seq post) (Insolvency Act 1986 s 426(10)(a) (s 426(10)(a), (b) amended by the Insolvency Act 2000 s 8, Sch 4 para 16(1), (3));
- 41 (2) in relation to Scotland, provision extending to Scotland and made by or under the Insolvency Act 1986 or the Company Directors Disqualification Act 1986 s 1A (as added), ss 6-10 (as amended), ss 12-15 (as amended), ss 19(1)(c), 20 (as amended), Sch 1 (as amended), and ss 1-17 as they apply for the purposes of those provisions (see para 1107 et seq post), the Companies Act 1985 Pt XVIII (ss 462-487) or the Bankruptcy (Scotland) Act 1985 (Insolvency Act 1986 s 426(10)(b) (as so amended));
- 42 (3) in relation to Northern Ireland, provision made by or under the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, or the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150 (Insolvency Act 1986 s 426(10)(c) (amended by the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, art 381(2), Sch 9 Pt II para 41(a); and by the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, art 26(2), Sch 3 para 2); and
- 43 (4) in relation to any relevant country or territory (see note 5 infra), so much of the law of that country or territory as corresponds to provisions falling within any of heads (1)-(3) supra (Insolvency Act 1986 s 426(10)(d)).

References to any enactment include, in relation to any time before the coming into force of that enactment, the corresponding enactment in force at that time: s 426(10). For the meaning of 'United Kingdom' see para 12 note 2 ante.

2 In *Re Dallhold Estates (UK) Pty Ltd* [1992] BCLC 621, [1992] BCC 394, administrators were appointed to an Australian company pursuant to a letter of request from the Australian courts; it was held that the mandatory nature of the word 'shall' in the Insolvency Act 1986 s 426(4) meant that the English court had to give the assistance requested unless there was 'some compelling reason' why that should not be done: *Re Dallhold Estates (UK) Pty Ltd* supra at 627 and at 399 per Chadwick J. In *Re Bank of Credit and Commerce International SA (No 9)*, *Re Bank of Credit and Commerce International (Overseas) Ltd* [1994] 3 All ER 764, [1994] 2 BCLC 636, it was held that the Insolvency Act 1986 s 426 (as amended) enabled the English court to apply substantive, and not merely procedural, provisions of the Insolvency Act 1986 in respect of a foreign company (ie ss 212-214, 238 (as amended)), notwithstanding the fact that the law of the country of incorporation of the relevant company, being the Cayman Islands, had no statutory equivalent to s 213, s 214 or s 238; the court held that the English court had a jurisdiction as to how to give assistance but should exercise its discretion in favour of granting the assistance requested unless there were some good reason for not doing so: *Re Bank of Credit and Commerce International SA (No 9)* supra at 785 and at 657-658. In *Re Focus Insurance Co Ltd* [1997] 1 BCLC 219, [1996] BCC 659, Scott V-C described the approach in *Re Dallhold Estates (UK) Pty Ltd* supra and that in *Re Bank of Credit and Commerce International SA (No 9)*, *Re Bank of Credit and Commerce International (Overseas) Ltd* supra as 'very similar'; he stated that the issue for the English court was whether there was any good reason or any compelling reason why the orders sought in the letter of request should not be made by the English court; the court refused to make the orders in the letters of request, which were for the provision of information to the applicant as judgment creditor preliminary to its execution over the bankrupt respondent's assets, because the applicant had made the respondent bankrupt in England and the assets of the bankrupt respondent should be realised by the trustee for distribution to the entirety of his creditors; further, the English trustee in bankruptcy could have obtained under English law all the relief sought by way of the letters of request. In *Hughes v Hannover Rückversicherungs-Aktiengesellschaft* [1997] 1 BCLC 497, CA, the court refused to grant orders in the form sought by a letter of request from the Bermudian courts against the respondent, seeking worldwide injunctive relief, where the respondent's only connection with the English jurisdiction was a place of business, and where the appropriate jurisdiction for the relief sought was the United States of America. A letter of request need not specify the facts which form the basis of the letter of request; and the English court has jurisdiction to investigate those facts: *Re Bank of Credit and Commerce International SA (No 9)*, *Re Bank of Credit and Commerce International (Overseas) Ltd* supra. Where recognition of a foreign appointed liquidator is sought by a letter of request, the policy behind the Insolvency Act 1986 s 426 (as amended) is to encourage the English courts to recognise the appointment, unless the only purpose of such recognition is to permit the liquidator to operate in England and Wales in a manner which the English courts would regard as impermissible: *Re Trading Partners Ltd, Akers v Lomas* [2002] 1 BCLC 655. In *Re Business City Express Ltd* [1997] 2 BCLC 510, [1997] BCC 826, the English court, on request by the Irish court, applied Irish law to bind English creditors into a composition notwithstanding the different treatment of creditors within the same class.

A court in England faced with a request from a foreign court for assistance may apply: (1) its own general jurisdiction and powers (including the power to grant injunctions and appoint receivers); (2) the insolvency law of England and Wales as defined in the Insolvency Act 1986 s 426(10) (as amended) (see note 1 supra); or (3) so much of the law of the relevant country (see note 5 infra) as corresponds to such insolvency law of England and Wales: *Hughes v Hannover Rückversicherungs-Aktiengesellschaft* supra.

3 Insolvency Act 1986 s 426(1). As to judicial notice of court documents see para 1047 post.

4 Ibid s 426(2).

5 Ibid s 426(4). For these purposes, 'relevant country or territory' means any of the Channel Islands or the Isle of Man, or any country or territory designated for the purposes of this provision by the Secretary of State (or, in relation to Northern Ireland, the Department of Economic Development in Northern Ireland) by order made by statutory instrument: s 426(11), (12)(a) (s 426(12) added by the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, Sch 9 Pt II para 41(b)). The following countries and territories are designated for these purposes: Anguilla, Australia, The Bahamas, Bermuda, Botswana, Brunei Darussalam, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Republic of Ireland, Malaysia, Montserrat, New Zealand, St Helena, Republic of South Africa, Turks and Caicos Islands, Tuvalu, Virgin Islands: Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986, SI 1986/2123, art 2, Schedule; Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1996, SI 1996/253, art 2, Schedule; Co-operation of Insolvency Courts (Designation of Relevant Country) Order 1998, SI 1998/2766, art 2. The provisions of the Insolvency Act 1986 s 426(4), (5), (10), (11) (as amended) extend to the Bailiwick of Guernsey with certain modifications: see the Insolvency Act 1986 (Guernsey) Order 1989, SI 1989/2409; and para 1156 post. As to the Secretary of State see para 11 note 10 ante.

6 Insolvency Act 1986 s 426(5). The discretion referred to in s 426(5) is a discretion of the English court as to whether to apply its own law or the law of the requesting court to the matters specified in the request; and it is to that discretion that the proviso in s 426(5) referring to the rules of private international law is directed: *Re Bank of Credit and Commerce International SA (No 9)*, *Re Bank of Credit and Commerce International*

(Overseas) Ltd [1994] 3 All ER 764 at 783, [1994] 2 BCLC 636 at 655 per Rattee J; *Hughes v Hannover Rückversicherungs-Aktiengesellschaft* [1997] 1 BCLC 497, CA; cf *Re Dallhold Estates (UK) Pty Ltd* [1992] BCLC 621 at 626, [1992] BCC 394 at 399 per Chadwick J. See also *Re Southern Equities Corp Ltd (in liquidation)*, *England v Smith* [2001] Ch 419, [2002] 2 WLR 1141, CA (where assistance was given by directing an examination under the Australian equivalent of the Insolvency Act 1986 s 236; the fact that an English court would not have made an order for examination in comparable circumstances was irrelevant once the choice was made to apply Australian law); *Re Duke Group Ltd (in liquidation)* [2001] BCC 144. In exercising the discretion, the court should take into account the foreign elements in deciding whether to apply English law or the law of the requesting country, such as the connection of the parties with England and with the requesting country: *Re Television Trade Rentals Ltd* [2002] EWHC 211, [2002] BCC 807.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1029 Co-operation between courts exercising jurisdiction in relation to insolvency

NOTE 1--Provisions of the Banking Act 2009 about bank insolvency are insolvency law for the purposes of the Insolvency Act 1986 s 426: Banking Act 2009 s 129.

NOTE 6--There is no requirement that the other relevant country's law of distribution coincides with English law: *Re HIH Casualty and General Insurance Ltd; McMahon v McGrath* [2008] UKHL 21, [2008] 3 All ER 869 (English principles of justice not offended by mere fact that insurance creditors were preferential creditors in insurance insolvency under Australian law).

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(3) APPEALS AND REVIEWS OF COURT ORDERS

1030. Appeals and reviews of court orders in general.

Every court having jurisdiction under the Insolvency Act 1986 to wind up companies¹ may review, rescind or vary any order made by it in the exercise of that jurisdiction². An appeal from a decision made in the exercise of that jurisdiction by a county court or by a registrar of the High Court lies to a single judge of the High Court³; and an appeal from a decision of that judge on such an appeal lies, with the leave of the Court of Appeal, to the Court of Appeal⁴. No appeal to the Court of Appeal from the decision of the judge on such an appeal lies unless the Court of Appeal considers that the appeal would raise an important point of principle or practice or there is some other compelling reason for the Court of Appeal to hear it⁵.

A county court is not, in the exercise of its jurisdiction to wind up companies, subject to be restrained by the order of any other court; and no appeal lies from its decision in the exercise of that jurisdiction except as is mentioned above⁶.

Any application for the rescission of a winding-up order must be made within seven days after the date on which the order was made⁷.

1 As to the courts having such jurisdiction see para 438 et seq ante. It has been held that the review of a registrar's decision may be undertaken only by a registrar, not by a judge (*Re SN Group plc* [1994] 1 BCLC 319, [1993] BCC 808), but see now *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145, where it was held (not following *Re SN Group plc* supra on this point) that a puisne judge does have jurisdiction to review the decision of a registrar. A registrar may adjourn an application to review his own previous decision to be heard by a judge: *Re Dollar Land (Feltham) Ltd* [1995] 2 BCLC 370, [1995] BCC 740. On an application to review the making of a winding-up order, the court has a discretion under the Insolvency Rules 1986, SI 1986/1925, r 4.16(5) to give leave to opposing creditors to appear and be heard: see para 471 ante. An application to restrain advertisement of a winding-up petition and remove the petition from the file can be an application to review a previous application to restrain presentation of a petition, even though (it seems) the latter application is not made under the insolvency jurisdiction: *RWH Enterprises Ltd v Portedge Ltd* [1998] BCC 556, CA.

2 Insolvency Rules 1986, SI 1986/1925, r 7.47(1). There is nothing in r 7.47 which is inconsistent with the application of the 'slip rule': *Re Brian Sheridan Cars Ltd, Official Receiver v Sheridan* [1996] 1 BCLC 327, sub nom *Re Brian Sheridan Cars Ltd* [1995] BCC 1035. Although as a matter of jurisdiction the power to review is unfettered, the power is to be exercised judicially; and the exercise of the power should, as a matter of discretion, be confined to cases in which there has been some change in circumstances which may, perhaps, include the consideration of material which was not before the original court: *Re RS & M Engineering Co Ltd, Mond v Hammond Suddards (No 2)* [2000] Ch 40, [1999] 3 WLR 697, [1999] 2 BCLC 485, CA. Save in very exceptional circumstances where it might be necessary to correct an obvious injustice, the power of review must be confined to cases of changed circumstances or the introduction of fresh evidence: *Re Thirty-Eight Building Ltd (in liquidation) (No 2), Simms v Saunders* [2000] 1 BCLC 201. The court has jurisdiction to hear both an appeal against a registrar's order and to review that order, but such application should be made very rarely: *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145.

3 Such an appeal does not require the permission of any court: *Practice Direction--Insolvency Proceedings* para 17.6. As to the practice and procedure for first appeals (as defined) see *Practice Direction--Insolvency Proceedings* paras 17.8-17.23. A first appeal is an appeal from a decision of a county court (whether made by a district judge or a circuit judge) or of a registrar of the High Court in insolvency proceedings: see *Practice Direction--Insolvency Proceedings* para 17.2(1). As to the appellant's notice and respondent's notice to be used in such appeals see *Practice Direction--Insolvency Proceedings* para 17.9, Schedule, Forms PDIP 1, PDIP 2.

4 Insolvency Rules 1986, SI 1986/1925, r 7.47(2); and see the text and note 5 infra. An appeal from a winding-up order made by the Companies Court registrar should be made to a single judge of the Chancery

Division and not to the Court of Appeal: *Re Calahurst Ltd* [1989] BCLC 140, 5 BCC 318; *Re Tasbian Ltd (No 2)* [1991] BCLC 59, [1990] BCC 322, CA (decided under the Company Directors Disqualification Act 1986); *Cornhill Insurance plc v Cornhill Financial Services Ltd* [1993] BCLC 914 at 958-963, [1992] BCC 818 at 858-862, CA, per Dillon LJ. Appeal from a decision of a district judge in the county court also lies to the High Court and not a county court judge: *Secretary of State for Trade and Industry v Langley* [1993] BCLC 1340, sub nom *Re Langley Marketing Services Ltd* [1992] BCC 585 (decided under the Company Directors Disqualification Act 1986). The Insolvency Rules 1986, SI 1986/1925, r 7.47 applies to administration orders under the Insolvency Act 1986 s 8 (repealed, subject to savings in respect of certain types of insolvency proceedings: see para 145 et seq ante): *Cornhill Insurance plc v Cornhill Financial Services Ltd* supra. It seems it would apply to administration orders made by the court under the Insolvency Act 1986 Sch B1 paras 10-13 (as added) (see para 212 et seq ante). In a case where a registrar has refused to review his original decision, an appeal may be made under the Insolvency Rules 1986, SI 1986/1925, r 7.47 appealing the original decision of the registrar, or appealing his refusal to review his original decision, or both (*Re SN Group plc* [1994] 1 BCLC 319, [1993] BCC 808), but combined applications to review and appeal should be rarely made (*Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145). Leave is not required for an appeal to the High Court but is required (either from the judge or from the Court of Appeal) for an appeal from the High Court to the Court of Appeal where the decision of the judge is not itself a decision on appeal (*Re Busytoday Ltd, Popely v Lewis* [1992] 4 All ER 61, [1992] 1 WLR 683; *Midrome Ltd v Shaw* [1994] 1 BCLC 180, [1993] BCC 659, CA); but where the decision of the judge is itself a decision on appeal, leave of the Court of Appeal is necessary (see note 5 infra). Appeals under the Insolvency Rules 1986, SI 1986/1925, r 7.47 are true appeals and not rehearings de novo: *Re Probe Data Systems Ltd (No 3)* [1991] BCLC 586, [1991] BCC 428 (decided under the Company Directors Disqualification Act 1986); *Re Tasbian Ltd (No 3)* [1991] BCLC 792, [1991] BCC 435 (decided under the Company Directors Disqualification Act 1986); *Re Industrial and Commercial Securities plc* (1989) 5 BCC 320; *Re Dollar Land (Feltham) Ltd* [1995] 2 BCLC 370, [1995] BCC 740. Hence, on an appeal, new evidence will be admitted only if the court so orders, and in deciding whether to allow further evidence the principles set out in *Ladd v Marshall* [1954] 3 All ER 745, [1954] 1 WLR 1489, CA, remain relevant: *Hertfordshire Investments Ltd v Bubb* [2000] 1 WLR 2318. The jurisdiction to admit evidence on an application to review is probably wider: *Re SN Group plc* supra; cf *Re a Debtor (No 32-SD-1991)* [1993] 2 All ER 991, [1993] 1 WLR 314 (bankruptcy case).

5 Access to Justice Act 1999 s 55(1); CPR 52.13; and see *Practice Direction--Insolvency Proceedings* para 17.3. See further CIVIL PROCEDURE vol 12 (2009) PARA 1682.

6 Insolvency Rules 1986, SI 1986/1925, r 7.47(3).

7 Ibid r 7.47(4). The time for applying for a rescission may be extended by the court: *Re Calmex Ltd, Calmex Ltd v C Lila Ltd* [1989] 1 All ER 485, [1989] BCLC 299; *Re Virgo Systems Ltd* [1990] BCLC 34, 5 BCC 833. The jurisdiction to extend the seven-day period must, however, be cautiously exercised and strictly justified if the extension is to cover any substantial period: *Leicester v Stevenson* [2002] EWHC 2831 (Ch), [2003] 2 BCLC 97. When a winding-up order is rescinded on the ground that it was made by mistake, the court has jurisdiction to order the registrar of companies to remove the order from the file at Companies House, as the order is a nullity: *Re Calmex Ltd, Calmex Ltd v C Lila Ltd* supra. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1030 Appeals and reviews of court orders in general

NOTE 2--The court's power to vary its order is the sanction by which the obligation of full disclosure is enforced and others are deterred from breaking it; in the event of any substantial breach, court is strongly inclined towards setting its order aside and not renewing it, so as to deprive the defaulting party of any advantage that the order might have given him: *Re OJSC ANK Yugraneft; Millhouse Capital UK Ltd v Sibir Energy plc* [2008] EWHC 2614 (Ch), [2009] 1 BCLC 298.

TEXT AND NOTES 3, 4--SI 1986/1925 r 7.47(2) substituted: SI 2010/686.

NOTE 3--See *Secretary of State for Trade and Industry v Paulin* [2005] EWHC 888 (Ch), [2005] 2 BCLC 667 (disqualification order: in deciding whether to admit fresh evidence, court should take into account severity of consequences to applicant).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1031. Procedure on appeal in general.

1031. Procedure on appeal in general.

Subject to the provisions described below, the procedure and practice of the Supreme Court relating to appeals to the Court of Appeal apply to appeals in insolvency proceedings¹.

In relation to any appeal from a decision of a county court, whether made by a district judge or a circuit judge, or of a registrar of the High Court in insolvency proceedings to a single judge of the High Court², any reference in the Civil Procedure Rules to the Court of Appeal is replaced by a reference to that judge; and any reference to the registrar of civil appeals is replaced by a reference to the registrar of the High Court who deals with insolvency proceedings of the kind involved³. Except as otherwise provided⁴, the Civil Procedure Rules and forms do not apply to such appeals, which are governed by their own practice and procedure⁵. In insolvency proceedings, an appeal to the Court of Appeal⁶ is by ordinary application⁷, and not by application notice⁸.

1 Insolvent Rules 1986, SI 1986/1925, r 7.49(1) (r 7.49 substituted by SI 1999/1022). CPR Pt 52 and its Practice Direction and Forms apply to appeals from a decision of a judge of the High Court in insolvency proceedings: *Practice Direction--Insolvency Proceedings* para 17.4; and see CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq. For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Ie a first appeal as defined in *Practice Direction--Insolvency Proceedings* para 17.2(1), and as provided for in the Insolvent Rules 1986, SI 1986/1925, r 7.47(2) (see para 1030 ante).

3 Ibid r 7.49(2) (as substituted: see note 1 supra).

4 Ie provided under *Practice Direction--Insolvency Proceedings* Pt 4.

5 *Practice Direction--Insolvency Proceedings* para 17.7. As to the applicable practice and procedure see *Practice Direction--Insolvency Proceedings* paras 17.8-17.23.

6 Ie under CPR Pt 52: see CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

7 As to the form and contents of such an application see para 1057 post.

8 Insolvent Rules 1986, SI 1986/1925, r 7.49(3) (as substituted: see note 1 supra). See also *Practice Direction--Insolvency Proceedings* paras 17.2, 17.3. Under *Practice Direction--Appeals* (2001) PD 52, notice of an application to the appeal court for a remedy incidental to the appeal (eg an interim remedy under CPR 25.1 or an order for security for costs) may be included in the appeal notice or in an application notice under CPR Pt 23: *Practice Direction--Appeals* (2001) PD 52 para 5.5. It appears that the effect of the Insolvent Rules 1986, SI 1986/1925, r 7.49(3) (as substituted) is that where, under the CPR, an application notice would ordinarily be used, the correct procedure in appeals in insolvency proceedings is to apply by way of ordinary application (it seems, whether the appeal is a first appeal or not): see further (in relation to first appeals only) *Practice Direction--Insolvency Proceedings* paras 17.19-17.21.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvent Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1031 Procedure on appeal in general

TEXT AND NOTES--SI 1986/1925 r 7.49 substituted by r 7.49A: SI 2010/686.

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1032. Appeal from winding-up order.

An appeal against a winding-up order may be brought by a creditor or contributory who has appeared in the winding-up court or by the company itself. If the company is the only appellant, security for costs of the appeal must be given¹, not out of the company's funds, but from an outside source, namely by the directors or shareholders who are supporting the appeal, and the security must be substantial².

An appeal from a winding-up order made by a district judge or circuit judge of the High Court or a registrar of the High Court may be brought without permission, but permission is required from the judge or the Court of Appeal for appeals from a High Court judge, and the Court of Appeal alone can grant permission where the decision of the High Court judge is itself made on appeal³. The time limit for appealing from any order or decision made or given in the matter of the winding up of a company under the Insolvency Act 1986 is 14 days after the date on which the order was made or such other period as the court which made the order may direct⁴.

An appeal does not stay the proceedings except so far as the judge or the Court of Appeal or a single judge of the Court of Appeal orders⁵. The Court of Appeal or a single judge of the High Court on an appeal from a county court or registrar of the High Court will not grant a stay while there is default in complying with an order to give security for costs⁶. Where a winding-up order is discharged on appeal, all proceedings taken under it are also discharged⁷.

1 *Re Diamond Fuel Co* (1879) 13 ChD 400, CA; *Re Photographic Artists' Co-operative Supply Association* (1883) 23 ChD 370, CA. Contributories or creditors who have not appeared below cannot appeal without leave: *Re Securities Insurance Co* [1894] 2 Ch 410, CA. Other interested persons have no right to appeal, but may be heard as amici curiae: *Re Bradford Navigation Co* (1870) 5 Ch App 600. In *Re National Savings Bank Association* (1866) 1 Ch App 547, on an unsuccessful appeal against a winding-up order, the respondent's costs were ordered to be paid out of the company's assets, no order being made as to the costs of the appellant company.

2 *Re Consolidated South Rand Mines Deep Ltd* [1909] WN 66, CA; *Re EK Wilson & Sons Ltd* [1972] 2 All ER 160, [1972] 1 WLR 791, CA.

3 See para 1030 ante.

4 CPR 52.4(2); *Practice Direction--Insolvency Proceedings* para 17.11(2) (as regards first appeals); and see CIVIL PROCEDURE vol 12 (2009) PARA 1663. Despite the fact that such orders are final, appeals to the Court of Appeal from orders on winding-up petitions must be entered in the interim appeals list, thus expediting the hearing: *Re Reliance Properties Ltd, Waygood, Otis v Reliance Properties Ltd* [1951] 2 All ER 327n, CA. See also *Re Naval, Military and Civil Service Co-operative Society of South Africa (No 2)* (1903) 47 Sol Jo 618; *Re Allsopp & Sons Ltd* (1903) 47 Sol Jo 671, CA.

5 CPR 52.7; *Practice Direction--Insolvency Proceedings* para 17.14 (as regards first appeals); and see CIVIL PROCEDURE vol 12 (2009) PARA 1669. In some cases, the court will order the advertisement of the winding-up order to be stayed pending an appeal: see further note 6 infra.

6 *Re Corp'n of British Investors* (1897) 41 Sol Jo 384, CA. Where a judge of the High Court has made a winding-up order or dismissed an appeal against such an order and an application is made for a stay of proceedings pending appeal: (1) the judge will not normally grant a stay of all proceedings but will confine himself to a stay of advertisement of the proceedings; (2) where the judge has granted permission to appeal any stay of advertisement will normally be until the hearing of the appeal but on terms that the stay will determine without further order if the appellant's notice is not filed within the period prescribed by the rules; and (3) where the judge has refused permission to appeal any stay of advertisement will normally be for a period not exceeding 28 days: *Practice Direction--Insolvency Proceedings* para 17.25(1)-(3). Application for any

further stay of advertisement should be made to the Court of Appeal: *Practice Direction--Insolvency Proceedings* para 17.25(3).

7 *Re National Permanent Benefit Building Society, ex p Williamson* (1869) 5 Ch App 309 at 314.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1032 Appeal from winding-up order

TEXT AND NOTE 4--For '14 days' read '21 days'; the period directed by the court may be longer or shorter than 21 days after the date on which the order to be appealed was made: CPR 52.4(2) (amended by SI 2005/3515).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1033. Time for and mode of appeal.

1033. Time for and mode of appeal.

The time for appealing from an order or decision made in insolvency proceedings¹ is such period as may be directed by the lower court or where the lower court makes no such direction, 14 days after the date of the decision of the lower court that the appellant wishes to appeal².

The appeal is by use of the requisite form of appellant's notice in insolvency proceedings³ or, where the appeal is not a first appeal, in accordance with Civil Procedure Rules⁴. The appellant's notice must, unless the appeal court otherwise orders, be served on each respondent as soon as practicable and in any event not later than seven days after it is filed⁵.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 CPR 52.4(2); *Practice Direction--Insolvency Proceedings* para 17.11(2) (as regards first appeals); and see CIVIL PROCEDURE vol 12 (2009) PARA 1663. As to extension of time for appealing see CPR 52.6; *Practice Direction--Insolvency Proceedings* para 17.13 (as regards first appeals); and see CIVIL PROCEDURE vol 12 (2009) PARA 1665.

3 As to the appellant's notice in the case of first appeals (see para 1030 note 3 ante), see *Practice Direction--Insolvency Proceedings* para 17.9, Schedule, Form PDIP 1; and as to the respondent's notice see *Practice Direction--Insolvency Proceedings* para 17.9, Schedule, Form PDIP 2.

4 *Practice Direction--Insolvency Proceedings* para 17.4. As to the relevant rules see CPR Pt 52; and CIVIL PROCEDURE vol 12 (2009) PARA 1658 et seq.

5 CPR 52.4(3); *Practice Direction--Insolvency Proceedings* para 17.11(3) (as regards first appeals); and see CIVIL PROCEDURE vol 12 (2009) PARA 1663. The parties to be served include the official receiver (see *Re Webber, ex p Webber* (1889) 24 QBD 313, CA) but he ought not to appear unless there are circumstances which he desires to bring before the court. As to the official receiver see para 503 et seq ante. Where supporting creditors and contributories have been allowed sets of costs between them, on a petition to wind up, the application to appeal need not be served on them unless it is sought to disturb that part of the order; but letters should be sent informing them of the appeal, and that the order as to their costs is not intended to be affected. In that case, a similar order as to their costs will be made if they appear on the appeal and it is unsuccessful. If, however, the application to appeal is served on them and the appeal is dismissed, they are entitled to separate sets of costs of appeal: *Re Ibo Investment Co* [1903] 2 Ch 373, CA.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1033 Time for and mode of appeal

TEXT AND NOTE 2--For '14 days' read '21 days'; the period directed by the lower court may be longer or shorter than 21 days after the date of the decision that the appellant wishes to appeal: CPR 52.4(2) (amended by SI 2005/3515).

NOTE 5--CPR 52.4(3) amended: SI 2005/3515.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1034. Appeals from county courts.

1034. Appeals from county courts.

Any appeal from a county court in a winding-up matter must be made to a single judge of the High Court¹.

¹ See para 1030 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1035. Appeal from registrar.

1035. Appeal from registrar.

An appeal from a decision of any registrar of the High Court¹ is brought by an application to a single judge of the High Court to discharge the order, and not by appealing to the Court of Appeal². The application must be made within 14 days after the date of the decision of the registrar, or within such period as the registrar may direct³. Applications before the registrar may at any time be, and often are, adjourned by him to be heard before the judge⁴.

1 For the meaning of 'the registrar' see para 1055 post.

2 See para 1030 ante.

3 *Practice Direction--Insolvency Proceedings* para 17.11(2).

4 See the Insolvency Rules 1986, SI 1986/1925, r 7.6(3); and para 1060 post. It has been held that an application to review the decision of a registrar under r 7.47 (see para 1030 ante) cannot be made direct to the judge under r 7.6(4) (see para 1060 post) (*Re SN Group plc* [1994] 1 BCLC 319, [1993] BCC 808), but see now *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145, where it was held (not following *Re SN Group plc* supra on this point) that a puisne judge does have jurisdiction to review the decision of a registrar.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1036. Appeals from High Court judge.

1036. Appeals from High Court judge.

The practice on appeal from a decision or order of a judge in the High Court is generally the same¹ as in the case of an appeal from any other judge of the Chancery Division². No appeal lies from an order allowing an extension of time for appealing from a judgment or order³.

An appeal to the Court of Appeal from the decision of a High Court judge on an appeal from a county court judge or a registrar of the High Court requires the leave of the Court of Appeal⁴. No appeal may be made to the Court of Appeal from the decision of the judge on such an appeal unless the Court of Appeal considers that the appeal would raise an important point of principle or practice or there is some other compelling reason to hear it⁵.

1 For exceptions see in particular para 1031 text to note 8 ante.

2 See para 1030 ante.

3 See the Supreme Court Act 1981 s 18(1)(b); and CIVIL PROCEDURE vol 12 (2009) PARA 1705.

4 Insolvency Rules 1986, SI 1986/1925 r 7.47(2). See also para 1030 notes 4, 5 supra.

5 Access to Justice Act 1999 s 55(1); CPR 52.13; and see *Practice Direction--Insolvency Proceedings* para 17.3. See further CIVIL PROCEDURE vol 12 (2009) PARA 1682. Subject to the proviso in the text, the general practice on appeal from such a decision to the Court of Appeal applies: see para 1030 et seq ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1036 Appeals from High Court judge

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1037. Appeal from official receiver.

1037. Appeal from official receiver.

An appeal from the official receiver¹ as such to the court may be brought:

- 1332 (1) in respect of his decision refusing to extend the time for submitting or to dispense with the statement of affairs²;
- 1333 (2) in respect of his decision, as chairman of a meeting, whether a proof should be admitted for the purpose of voting³.

An appeal⁴ against a decision of the official receiver must be brought within 28 days of the notification of the decision⁵, and is by application to the court⁶.

1 As to the official receiver see para 503 et seq ante.

2 See para 522 ante.

3 See paras 654, 668-669 ante.

4 ie under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

5 Ibid r 7.50(1) (renumbered by SI 2003/1730).

6 As to the making of applications see para 1055 et seq post.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1038. Appeal from liquidator.

1038. Appeal from liquidator.

Any person who is aggrieved by an act or decision of the liquidator may apply to the court; and the court may confirm, reverse or modify the act or decision complained of and make such order in the case as it thinks just¹. In particular, an appeal to the court is allowed from the liquidator's decision, as chairman of a meeting, as to a creditor's or contributory's entitlement to vote², and whether a proof should be admitted for the purposes of voting or rejected³, and from his decision as to the rejection or admission of a proof for the purposes of dividends⁴. The appeal is brought by application to the court⁵.

A person whose name has been finally settled on the list of contributories by the liquidator may appeal to the court by way of application within 21 days from the date of service on him of notice of the settlement of the list⁶.

1 Insolvency Act 1986 s 168(5). The wording is similar to that used in the Bankruptcy Act 1914 s 80 (repealed and replaced by the Insolvency Act 1986 s 303(1)). See *Leon v York-o-Matic Ltd* [1966] 3 All ER 277, [1966] 1 WLR 1450 (principles governing the exercise of the court's power under the Bankruptcy Act 1914 s 80 (repealed), applied by analogy). See also *Re Wyvern Development Ltd* [1974] 2 All ER 535, [1974] 1 WLR 1097; *Re Acli Metals (London) Ltd* [1989] BCLC 749, sub nom *Re ACLI Metals (London) Ltd*, *AML Holdings Inc v Auger* (1989) 5 BCC 749; *Re Hans Place Ltd (in liquidation)* [1993] BCLC 768, [1992] BCC 737; *Re Edennot Ltd*, *Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389, [1996] BCC 718, CA; *Hamilton v Official Receiver* [1998] BPIR 602.

'Person aggrieved' means a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something; it is not sufficient that he has lost something which he would have obtained if a different order had been made: *Re Sidebotham, ex p Sidebotham* (1880) 14 ChD 458 at 465, CA; *Re Reed, Bowen & Co, ex p Official Receiver* (1887) 19 QBD 174, CA; *Re Lamb, ex p Board of Trade* [1894] 2 QB 805, CA (bankruptcy cases). In *Re Duckett, ex p Minister of Education v Trustee* [1964] Ch 398, [1964] 1 All ER 19, CA, it was assumed that the minister was 'a person aggrieved' by an order for the payment by him to the trustee of superannuation contributions repayable to a bankrupt teacher. See also *Re Burn, ex p Dawson, McClellan and Trustee* [1932] 1 Ch 247; *Re Baron, ex p Debtor v Official Receiver* [1943] Ch 177, [1943] 2 All ER 662; and cf *A-G of Gambia v N' Jie* [1961] AC 617, [1961] 2 All ER 504, PC, where *Re Sidebotham, ex p Sidebotham* supra and *Re Reed, Bowen & Co, ex p Official Receiver* supra were considered. See further paras 572 note 5, 580 ante.

2 See para 668 ante.

3 See para 669 ante.

4 See para 786 ante. The time for appealing is in this case 21 days from the date of service of the notice of rejection of the proof: see the Insolvency Rules 1986, SI 1986/1925, r 4.83(1); and para 786 ante. As to costs see para 780 ante.

5 As to the making of applications see para 1055 et seq post.

6 See para 724 ante. The official receiver, as liquidator or provisional liquidator, is not in any case personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories: see para 724 ante. As to the official receiver see para 503 et seq ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1039. Appeal from Secretary of State.

1039. Appeal from Secretary of State.

There is no general right to appeal to the court from decisions of the Secretary of State¹, but in certain cases a right of appeal is expressly given. Any person dissatisfied with the Secretary of State's decision in respect of a claim to undistributed assets may appeal to the court².

Appeals must be made by application³. An appeal⁴ against a decision of the Secretary of State must be brought within 28 days of the notification of the decision⁵.

1 As to the Secretary of State see para 11 note 10 ante.

2 See para 608 ante.

3 As to the making of applications see para 1055 et seq post.

4 le under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

5 Ibid r 7.50(1) (renumbered by SI 2003/1730).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(3) APPEALS AND REVIEWS OF COURT ORDERS/1040. Appeals from supervisor or administrator.

1040. Appeals from supervisor or administrator.

If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor of a voluntary arrangement, he may apply¹ to the court; and the court may:

- 1334 (1) confirm, reverse, or modify any act or decision of the supervisor²;
- 1335 (2) give him directions³; or
- 1336 (3) make such other order as it thinks fit⁴.

An appeal from the administrator to the court may be brought:

- 1337 (a) in respect of his decision refusing to extend the time for submitting or to dispense with the statement of affairs⁵;
- 1338 (b) in respect of his decision regarding payment of the expenses of making out the statement of affairs⁶.

1 As to the making of applications see para 1055 et seq post.

2 See the Insolvency Act 1986 s 7(3)(a); and para 133 ante.

3 See *ibid* s 7(3)(b); and para 133 ante.

4 See *ibid* s 7(3)(c); and para 133 ante.

5 See para 173 ante.

6 See para 174 ante. As to the right of appeal to the court against a decision of the chairman at meetings of creditors regarding the admission and rejection of claims see para 194 ante; and as to applications to the court challenging the administrator's conduct of the company see para 209 et seq ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1041. Rules and regulations; Insolvency Rules Committee.

(4) MISCELLANEOUS PRACTICE AND PROCEDURE

(i) In general

1041. Rules and regulations; Insolvency Rules Committee.

As regards company insolvency proceedings the practice is, for the most part, regulated by the Insolvency Rules 1986¹ which were made by the Lord Chancellor² under statutory power³.

The Insolvency Rules Committee⁴ continues to exist for the purposes of being consulted by the Lord Chancellor before he makes rules⁵. The committee must consist of:

- 1339 (1) a judge of the High Court attached to the Chancery Division;
- 1340 (2) a circuit judge;
- 1341 (3) a registrar in bankruptcy of the High Court;
- 1342 (4) the registrar of a county court;
- 1343 (5) a practising barrister;
- 1344 (6) a practising solicitor; and
- 1345 (7) a practising accountant,

and the appointment of any person as a member of the committee must be made by the Lord Chancellor⁶. The Lord Chancellor may appoint as additional members of the committee any person appearing to him to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned⁷; and he must consult the committee before making⁸ any rules⁹.

1 Ie the Insolvency Rules 1986, SI 1986/1925 (amended by SI 1987/1919; SI 1989/397; SI 1991/495; SI 1993/602; SI 1995/586; SI 1998/1129; SI 1999/359; SI 1999/1022; SI 2001/763; SI 2001/1149; SI 2001/3649; SI 2002/1242; SI 2002/1307; SI 2002/2712; SI 2003/1730; SI 2004/584). See also the regulations referred to in para 2 note 5 ante.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

3 The Lord Chancellor, with the concurrence of the Secretary of State, is empowered to make general rules, in relation to England and Wales, for the purpose of giving effect to the statutory provisions relating to the insolvency or winding up of companies (ie the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended) or EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings'), although rules made for the purpose of giving effect to the European Regulation on Insolvency Proceedings may not create an offence of a kind referred to in the European Communities Act 1972 Sch 2 para 1(1)(d) (as amended) (which prohibits the creation of serious criminal offences by way of Orders in Council or regulations under s 2(2) implementing Community obligations): Insolvency Act 1986 s 411(1)(a), (2B) (s 411(1)(a) amended, and s 411(2A), (2B) added, by the Insolvency Act 1986 (Amendment) Regulations 2002, SI 2002/1037, regs 2, 3). For these purposes, references to the Insolvency Act 1986 Pts I-VII (as amended) are to be read as including the Companies Act 1985 so far as relating to the insolvency or winding up of companies, and to matters connected with or arising out of such insolvency or winding up: s 411(3). Without prejudice to the generality of s 411(1) (as amended), or any provision of Pts I-VII (as amended) by virtue of which rules under s 411 (as amended) may be made with respect to any matter, rules under s 411 (as amended) may contain any such provision as is specified in s 411(2), Sch 8 (as amended) (see heads (1)-(34) infra) or corresponds to provision contained immediately before the coming into force of the Insolvency Act 1985 s 106

(repealed) in rules made, or having effect as if made, under the Companies Act 1985 s 633(1) (repealed) or s 633(2) (repealed) (old winding up rules); and such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient: Insolvency Act 1986 s 411(2). As to the European Regulation on Insolvency Proceedings see para 46 et seq ante. As to the Secretary of State see para 11 note 10 ante. In relation to directors' disqualification, the power to make rules under the Insolvency Act 1986 s 411 (as amended) is extended: see the Company Directors Disqualification Act 1986 s 21(2) (as amended); and para 1107 post.

The power to make rules conferred by the Insolvency Act 1986 s 411 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 411(4). Regulations made by the Secretary of State under a power conferred by rules under s 411 (as amended) must be made by statutory instrument and, after being made, must be laid before each House of Parliament: s 411(5). Nothing in s 411 (as amended) prejudices any power to make rules of court: s 411(6).

The provisions capable of inclusion in company insolvency rules are:

- 44 (1) provision for supplementing, in relation to the insolvency or winding up of companies, any provision made by or under s 117 (as amended) (jurisdiction of courts in relation to winding up: see paras 438-440 ante) (Sch 8 para 1);
- 45 (2) provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of Pts I-VII (as amended) or the Companies Act 1985 so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court (subject to the clarification that any rules made by virtue of this provision about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration) (Insolvency Act 1986 Sch 8 para 2 (amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 9, 38(1), (2)). The amendment made to this provision does not apply in relation to special administration regimes (see para 145 ante) or where a petition for an administration order has been presented before 15 September 2003, in which event the provision which may be included in rules under the Insolvency Act 1986 Sch 8 para 2 is not subject to the clarification set out above (Sch 8 para 2 (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a));
- 46 (3) provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the manner prescribed by the rules (Insolvency Act 1986 Sch 8 para 3);
- 47 (4) provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment or subordinate legislation relating to, or to matters connected with or arising out of, the insolvency or winding up of companies (Sch 8 para 4);
- 48 (5) provision specifying the persons to whom any notice is to be given (Sch 8 para 5);
- 49 (6) provision for the registration of voluntary arrangements approved under Pt I (ss 1-7B) (as amended) (see para 71 et seq ante), including provision for the keeping and inspection of a register (Sch 8 para 6);
- 50 (7) provision as to the manner in which a provisional liquidator appointed under s 135 (see para 491 ante) is to carry out his functions (Sch 8 para 7);
- 51 (8) provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company (Sch 8 para 8);
- 52 (9) provision with respect to meetings of a company's creditors, contributories or members, as follows:
 7. (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power, and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting) (Sch 8 para 9(a));
 - 8
 8. (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting (Sch 8 para 9(b));
 - 9

9. (c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined) (Sch 8 para 9(c));
10. (d) provision for requiring a person who is or has been an officer of the company to attend a meeting (Sch 8 para 9(d));
11. (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held (Sch 8 para 9(e));
12. (f) provision as to the manner of proving the decisions of a meeting (Sch 8 para 9(f));
- 53 (10) provision with respect to committees, as follows:
13. (a) provision as to the functions, membership and proceedings of a committee established under s 49 (see para 415 ante), s 68 (Scotland), s 101 (see para 994 ante), s 141 (see para 629 ante), s 142 (liquidation committee (Scotland)) or Sch B1 para 57 (as added) (see para 279 ante) (Sch 8 para 10(1) (amended by the Enterprise Act 2002 Sch 17 paras 9, 38(1), (3)). The amendment made to this provision does not apply in relation to special administration regimes or where a petition for an administration order has been presented before 15 September 2003, in which event the provision which may be included in rules under the Insolvency Act 1986 Sch 8 para 10(1) includes provision as to the functions, membership and proceedings of a committee established under s 26 (now repealed) (Sch 8 para 10(1) (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a)); and
14. (b) provision for resolving differences, with respect to the establishment of a committee under the Insolvency Act 1986 s 101, s 141 or s 142, between a meeting of the company's creditors and a meeting of its contributories or members; provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and provision modifying the requirements of the Insolvency Act 1986 with respect to the establishment of the committee in a case where a winding-up order has been made immediately upon the discharge of an administration order (Sch 8 para 10(2));
- 54 (11) provision as to the manner in which any requirement that may be imposed on a person under any of Pts I-VII (as amended) by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under s 177 (see paras 498-499 ante) is to be so imposed (Sch 8 para 11);
- 55 (12) provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security (Sch 8 para 12);
- 56 (13) provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends (Sch 8 para 13);
- 57 (14) provision which, with or without modifications, applies in relation to the winding up of companies any enactment contained in Pts VIII-XI (ss 252-385) (as amended) or in the Bankruptcy (Scotland) Act 1985 (Insolvency Act 1986 Sch 8 para 14);
- 58 (15) provision about the application of s 176A (as added) (see para 322 ante) which may include, in particular, provision both enabling and requiring a receiver to institute winding-up proceedings (Sch 8 para 14A (added by the Enterprise Act 2002 Sch 17 paras 9, 38(1), (4)). The addition of this provision does not apply in relation to special administration regimes or where a petition for an administration order has been presented before 15 September 2003 (Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a));

- 59 (16) provision which either applies in relation to administration, with or without modifications, a provision of the Insolvency Act 1986 Pts IV-VII (ss 73-251) (as amended), or serves a purpose in relation to administration similar to a purpose which may be served by the rules in relation to winding up by virtue of a provision of Sch 8 (as amended) (Sch 8 para 14B (added by the Enterprise Act 2002 Sch 17 paras 9, 38(1), (5))). The addition of this provision does not apply in relation to special administration regimes or where a petition for an administration order has been presented before 15 September 2003 (Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a));
- 60 (17) provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under the Insolvency Act 1986 s 177 (see paras 498-499 ante), by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company (Sch 8 para 15);
- 61 (18) provision with respect to the manner in which moneys received by the liquidator of a company in the course of carrying out his functions as such are to be invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this head, have been paid into the Insolvency Services Account (Sch 8 para 16);
- 62 (19) provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account (Sch 8 para 16A (added by the Enterprise Act 2002 s 271(1)));
- 63 (20) provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a winding up (Insolvency Act 1986 Sch 8 para 17);
- 64 (21) provision as to the fees, costs, charges and other expenses that may be treated as properly incurred by the administrator or administrative receiver of a company (Sch 8 para 18);
- 65 (22) provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Pt I (as amended) (see para 71 et seq ante) or in the administration of any voluntary arrangement approved under Pt I (as amended) (Sch 8 para 19);
- 66 (23) provision requiring registrars and other officers of courts having jurisdiction in England and Wales in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies to keep books and other records with respect to the exercise of that jurisdiction and to make returns to the Secretary of State of the business of those courts (Sch 8 para 20);
- 67 (24) provision requiring a creditor, member or contributory, or such a committee as is mentioned in head (10) supra, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed (Sch 8 para 21);
- 68 (25) provision as to the manner in which public examinations under ss 133, 134 (see paras 538-543 ante) and proceedings under ss 236, 237 (see para 679 et seq ante) are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons, and as to the costs of such examinations and proceedings (Sch 8 para 22);
- 69 (26) provision imposing requirements with respect to:
15. (a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Pt I (as amended) (see para 71 et seq ante), of prescribed books, accounts and other records (Sch 8 para 23(a));
- 16 16. (b) the production of those books, accounts and records for inspection by prescribed persons (Sch 8 para 23(b));
- 17 17. (c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement (Sch 8 para 23(c)); and
- 18

18. (d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in the Value Added Tax Act 1983 s 22(3)(b) (repealed) (refund of tax in cases of bad debts: see para 428 ante) and the supply of copies of the certificate to creditors of the company (Insolvency Act 1986 Sch 8 para 23(d));
- 19
- 70 (27) provision requiring the person who is the supervisor of a voluntary arrangement approved under Pt I (as amended) (see para 71 et seq ante) when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement:
19. (a) to give notice of that fact to persons bound by the voluntary arrangement (Sch 8 para 24(a)); and
- 20
20. (b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement (Sch 8 para 24(b));
- 21
- 71 (28) provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal (Sch 8 para 25);
- 72 (29) provision imposing requirements in connection with the carrying out of functions under the Company Directors Disqualification Act 1986 s 7(3) (as amended) (see para 1125 post) (including, in particular, requirements with respect to the making of periodic returns) (Insolvency Act 1986 Sch 8 para 26);
- 73 (30) provision conferring power on the Secretary of State to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of the liquidator, administrator or administrative receiver of a company (Sch 8 para 27);
- 74 (31) provision conferring a discretion on the court (Sch 8 para 28);
- 75 (32) provision conferring power on the court to make orders for the purpose of securing compliance with obligations imposed by or under s 47 (see para 403 et seq ante), s 66 (Scotland), s 131 (see para 520 et seq ante), s 143(2) (see para 576 ante), s 235 (see para 678 ante), Sch B1 para 47 (as added) (see para 266 ante), or the Company Directors Disqualification Act 1986 s 7(4) (see para 1127 post) (Insolvency Act 1986 Sch 8 para 29 (amended by the Enterprise Act 2002 Sch 17 paras 9, 38(1), (6))). The amendment of this provision does not apply in relation to special administration regimes or where a petition for an administration order has been presented before 15 September 2003, in which event the provision which may be included in rules under the Insolvency Act 1986 Sch 8 para 29 includes provision conferring power on the court to make orders for the purpose of securing compliance with obligations imposed by or under s 22 (repealed) (Sch 8 para 29 (as originally enacted); Enterprise Act 2002 s 249(1), (2); Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, arts 2(1), 3(2)(a));
- 76 (33) provision making non-compliance with any of the rules a criminal offence (Insolvency Act 1986 Sch 8 para 30); and
- 77 (34) provision making different provisions for different cases or descriptions of cases, including different provisions for different areas (Sch 8 para 31).

For the purposes of Sch 8 (as amended), 'liquidator' includes a provisional liquidator (s 411(3)); and for the purposes of s 411(2), a reference in Sch 8 (as amended) to doing anything under or for the purposes of a provision of the Insolvency Act 1986 includes a reference to doing anything under or for the purposes of the European Regulation on Insolvency Proceedings (in so far as the provision of the Insolvency Act 1986 relates to a matter to which the European Regulation on Insolvency Proceedings applies) (Insolvency Act 1986 s 411(2A) (as so added)). As to the Insolvency Services Account and the Insolvency Services Investment Account see ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

The Secretary of State may also make regulations for the purpose of giving effect to Pt XIII (ss 388-398) (as amended) (see para 8 et seq ante): s 419(1). Without prejudice to the generality of s 419(1) or to any provision of Pt XIII (as amended) by virtue of which regulations may be made with respect to any matter, regulations under s 419 may contain: (i) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner (s 419(2)(a)); (ii) provision prohibiting a person from so acting in prescribed cases in which a conflict of interest will or may arise (s 419(2)(b)); (iii)

provision imposing requirements with respect to the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and the production of those books, accounts and records to prescribed persons (s 419(2)(c)); (iv) provision conferring power on prescribed persons to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and to apply to a court to examine such a person or any other person on oath concerning such a case; (v) provision making non-compliance with any of the regulations a criminal offence (s 419(2)(d)); and (vi) such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient (s 419(2)(e)).

Any power conferred by Pt XIII (as amended) or Pt XV (ss 411-422) (as amended) to make regulations, rules or orders is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament: s 419(3). Any rule or regulation under Pt XIII (as amended) or Pt XV (as amended) may make different provision with respect to different cases or descriptions of cases, including different provision for different areas: s 419(4).

4 le the committee established under the Insolvency Act 1976 s 10 (repealed).

5 Insolvency Act 1986 s 413(1).

6 Ibid s 413(3).

7 Ibid s 413(4).

8 le under ibid s 411 (as amended) (see note 3 supra) and s 412 (as amended) (individual insolvency rules: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 753).

9 Insolvency Act 1986 s 413(2) (as amended: see note 8 supra). This does not apply to rules which contain a statement that the only provision made by the rules is provision applying rules made under s 411 (as amended), with or without modifications, for the purposes of provisions made by any of the Water Industry Act 1991 ss 23-26 or Sch 3 (special administration orders: see WATER AND WATERWAYS vol 100 (2009) PARAS 173-176) or by any of the Railways Act 1993 ss 59-65 or Sch 6 or Sch 7 (as amended) (railway administration orders: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) paras 187-190); Insolvency Act 1986 s 413(2) (amended by the Water Act 1989 s 190(1), Sch 25 para 78(2); the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 46; and the Railways Act 1993 s 152(1), Sch 12 para 25).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1041 Rules and regulations; Insolvency Rules Committee

TEXT AND NOTES--Insolvency Act 1986 s 411 further amended: Constitutional Reform Act 2005 Sch 4 para 188; Banking Act 2009 ss 125(1)-(6), 160(1)-(5); SI 2009/805, SI 2009/1941. Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194. 1986 Act s 413 further amended: 2005 Act Sch 4 para 190. See also 2005 Act s 19, Sch 7 para 4.

NOTE 1--SI 1986/1925 further amended: SI 2007/1974, SI 2008/737, SI 2009/2472.

NOTE 3--Insolvency Act 1986 Sch 8 para 2 further amended: SI 2007/2194. Insolvency Act 1986 Sch 8 para 27 amended: Banking Act 2009 s 125(7).

NOTE 9--See the Water Industry (Special Administration) Rules 2009, SI 2009/2477; and WATER AND WATERWAYS vol 100 (2009) PARAS 173-176. The Insolvency Act 1986 s 413(2) does not apply to the first set of rules made in relation to building society insolvency or to the first set of rules made in relation to building society special administration: Building Societies (Insolvency and Special Administration) Order 2009, SI 2009/805, art 16.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1042. Application of rules.

1042. Application of rules.

The Insolvency Rules 1986¹ apply, save where otherwise expressly provided, to all proceedings under the Insolvency Act 1986 or the Insolvency Rules 1986 commenced on or after 29 December 1986².

¹ ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

² Ibid rr 13.1, 13.14(1)(c). The Insolvency Rules 1986, SI 1986/1925 (as amended) apply to receivers appointed on or after 29 December 1986: r 13.14(1)(a) (amended by SI 1987/1919). As to bankruptcy proceedings see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 754.

The Insolvency Rules 1986, SI 1986/1925 (as amended) apply to all insolvency proceedings on and after 11 January 1988 whenever those proceedings were commenced: Insolvency (Amendment) Rules 1987, SI 1987/1919, r 3(1), (2). As to the additional application of the Insolvency Rules 1986, SI 1986/1925, r 4.223 (as amended) see para 1005 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1043. Use of prescribed forms.

1043. Use of prescribed forms.

The forms contained in the Insolvency Rules 1986¹ must be used in and in connection with insolvency proceedings², whether in the High Court or a county court³; and they must be used with such variations, if any, as the circumstances may require⁴.

1 Ie the Insolvency Rules 1986, SI 1986/1925, r 12.7, Sch 4 (as amended).

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 12.7(1).

4 Ibid r 12.7(2). Where any form contained in Sch 4 (as amended) is substantially the same as one used for a corresponding purpose under either: (1) the law and practice obtaining before the coming into force of the Insolvency Rules 1986, SI 1986/1925 (as amended) (see para 1042 ante); or (2) if the form was first required to be used after the coming into force of those rules, the law and practice obtaining before the making of the requirement, whichever was appropriate in any case, the latter might continue to be used, with necessary modifications, until 1 March 1988: r 12.7(3) (substituted by SI 1987/1919).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1044. Application of Civil Procedure Rules and practice directions.

1044. Application of Civil Procedure Rules and practice directions.

Civil Procedure Rules and the practice and procedure of the High Court and of the county court (including any practice direction¹) apply to insolvency proceedings² in the High Court and the county court, in either case with any necessary modifications and except so far as they are inconsistent with the Insolvency Rules 1986³. All insolvency proceedings are allocated to the multi-track⁴.

1 'Practice direction' means a direction as to the practice and procedure of any court within the scope of the Civil Procedure Rules: Insolvency Rules 1986, SI 1986/1925, r 13.13(6) (substituted by SI 1999/1022). As to the making of practice directions see CIVIL PROCEDURE vol 11 (2009) PARA 27. As to the Civil Procedure Rules generally see CIVIL PROCEDURE.

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.51(1) (r 7.51 substituted by SI 1999/1022). The 'slip rule' applies in insolvency proceedings, there being nothing inconsistent in the Insolvency Rules 1986, SI 1986/1925, r 7.47 (see para 1030 ante) with its application: *Re Brian Sheridan Cars Ltd, Official Receiver v Sheridan* [1996] 1 BCLC 327, sub nom *Re Brian Sheridan Cars Ltd* [1995] BCC 1035. See further *Highberry Ltd v Colt Telecom Group plc* [2002] EWHC 2503 (Ch), [2003] 1 BCLC 290.

4 Insolvency Rules 1986, SI 1986/1925, r 7.51(2) (as substituted: see note 3 supra). Provision for the multi-track is made by CPR Pt 29 (see CIVIL PROCEDURE vol 11 (2009) PARAS 293-302). Provisions of the CPR providing for allocation questionnaires and track allocation accordingly do not apply to insolvency proceedings: Insolvency Rules 1986, SI 1986/1925, r 7.51(2) (as so substituted).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1044 Application of Civil Procedure Rules and practice directions

TEXT AND NOTES--SI 1986/1925 r 7.51 substituted by r 7.51A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1045. Regulations by Secretary of State.

1045. Regulations by Secretary of State.

The Secretary of State has power to make regulations with respect to certain matters arising in company insolvency proceedings¹.

¹ See para 551 ante. For an example of such regulations see the Insolvency Regulations 1994, SI 1994/2507. As to the Secretary of State see para 11 note 10 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1046. Admissibility in evidence of statement of affairs.

1046. Admissibility in evidence of statement of affairs.

Generally, in any proceedings, whether or not under the Insolvency Act 1986, a statement of affairs prepared for the purpose of any provision of the Insolvency Act 1986 which is derived from the Insolvency Act 1985¹, and any other statement made in pursuance of a requirement imposed by or under any such a provision or by or under rules made under the Insolvency Act 1986, may be used in evidence against any person making or concurring in making the statement². However, in certain criminal proceedings³ no evidence relating to the statement may be adduced, and no question relating to it may be asked, by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person⁴.

1 le, so far as continues to be relevant, the Insolvency Act 1986 s 2(3)(b) (derived from the Insolvency Act 1985 s 21(2)(b)) (see para 111 ante); the Insolvency Act 1986 s 47(1) (derived from the Insolvency Act 1985 s 53(1)) (see para 403 ante); the Insolvency Act 1986 s 95(3) (derived from the Insolvency Act 1985 s 83(3)) (see para 942 ante); and the Insolvency Act 1986 s 131(3) (derived from the Insolvency Act 1985 s 66(4)) (see para 521 ante).

2 Insolvency Act 1986 s 433(1) (s 433(1) renumbered, and s 433(2)-(4) added, by the Youth Justice and Criminal Evidence Act 1999 s 59, Sch 3 para 7). Statements made by a bankrupt in his public examination may be used against him in a prosecution for theft: *R v Kansal* [1993] QB 244, [1992] 3 All ER 844, CA.

3 le any offence other than: (1) an offence under the Insolvency Act 1986 s 22(6) (repealed), ss 47(6), 48(8), 66(6), 67(8), 95(8), 98(6), 99(3)(a), 131(7), 192(2), 208(1)(a), (d), (2), 210, 235(5), 353(1), 354(1)(b), (3) (s 354(3) as amended), s 356(1), (2)(a), (b), or Sch 7 para 4(3)(a) (see s 433(3)(a) (as added: see note 2 supra)); (2) an offence which is created by rules made under the Insolvency Act 1986 and designated for the purposes of s 433(3) (as added) by such rules or by regulations made by the Secretary of State (see s 433(3)(b) (as so added)); (3) an offence which is created by regulations made under any such rules and designated for these purposes by any such regulations (see s 433(3)(c) (as so added)); and (4) an offence under the Perjury Act 1911 s 1, s 2 or s 5 (as amended) (false statements made on oath or made otherwise than on oath: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 712 et seq) (see the Insolvency Act 1986 s 433(3)(d) (as so added)). The regulations referred to in head (2) supra must be made by statutory instrument and, after being made, must be laid before each House of Parliament: s 433(4) (as so added). As to the Secretary of State see para 11 note 10 ante.

4 Ibid s 433(2) (as added: see note 2 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1046 Admissibility in evidence of statement of affairs

TEXT AND NOTES 1, 2--Insolvency Act 1986 s 433(1) amended: Banking Act 2009 ss 128, 162.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1047. Judicial notice of court documents.

1047. Judicial notice of court documents.

In all proceedings under the provisions relating to the winding up of registered companies¹, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, must take judicial notice:

1346 (1) of the signature of any officer of the High Court or of a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, or of the High Court in Northern Ireland²; and also

1347 (2) of the official seal or stamp of the several offices of the High Court in England and Wales or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of the Insolvency Act 1986 or the Companies Act 1985, or any official copy of such a document³.

1 le the Insolvency Act 1986 Pt IV (ss 73-219) (as amended): see para 432 et seq ante.

2 Ibid s 196(a).

3 Ibid s 196(b).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1047 Judicial notice of court documents

TEXT AND NOTE 3--Insolvency Act 1986 s 196(b) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1048. Gazetting notices.

1048. Gazetting notices.

A copy of the Gazette¹ containing any notice required by the Insolvency Act 1986 or the Insolvency Rules 1986² to be gazetted is evidence of any facts stated in the notice³.

In the case of an order of the court notice of which is required by the Insolvency Act 1986 or the Insolvency Rules 1986 to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice⁴.

Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette must forthwith cause the variation of the order to be gazetted or, as the case may be, a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy⁵.

1 'The Gazette' means the London Gazette: Insolvency Rules 1986, SI 1986/1925, r 13.13(4).

2 ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

3 Ibid r 12.20(1).

4 Ibid r 12.20(2).

5 Ibid r 12.20(3). As to the filing of Gazette notices by the court see r 7.32; and para 1069 post.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1048 Gazetting notices

TEXT AND NOTES--SI 1986/1925 r 12.20 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1049. Evidence of proceedings at meetings.

1049. Evidence of proceedings at meetings.

A minute of proceedings at a meeting¹ of a company's creditors, or of the members of a company, or of the contributories in a company's liquidation, signed by a person describing himself as, or appearing to be, the chairman of that meeting is admissible in insolvency proceedings² without further proof³.

The minute is prima facie evidence that:

- 1348 (1) the meeting was duly convened and held⁴;
- 1349 (2) all resolutions passed at the meeting were duly passed⁵; and
- 1350 (3) all proceedings at the meeting duly took place⁶.

¹ ie a meeting held under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

² For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

³ Insolvency Rules 1986, SI 1986/1925, r 12.5(1).

⁴ Ibid r 12.5(2)(a).

⁵ Ibid r 12.5(2)(b).

⁶ Ibid r 12.5(2)(c).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1050. Documents issuing from Secretary of State.

1050. Documents issuing from Secretary of State.

Any document purporting to be, or to contain, any order, direction or certificate issued by the Secretary of State must be received in evidence and deemed to be or, as the case may be, contain that order or certificate, or those directions, without further proof, unless the contrary is shown¹; and this provision applies whether the document is signed by the Secretary of State himself or an officer on his behalf².

Without prejudice to this, a certificate signed by the Secretary of State or an officer on his behalf and confirming:

- 1351 (1) the making of any order³;
- 1352 (2) the issuing of any document⁴; or
- 1353 (3) the exercise of any discretion, power or obligation arising or imposed under the Insolvency Act 1986 or the Insolvency Rules 1986⁵,

is conclusive evidence of the matters dealt with in the certificate⁶.

1 Insolvency Rules 1986, SI 1986/1925, r 12.6(1). As to the Secretary of State see para 11 note 10 ante.

2 Ibid r 12.6(2).

3 Ibid r 12.6(3)(a).

4 Ibid r 12.6(3)(b).

5 Ibid r 12.6(3)(c).

6 Ibid r 12.6(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1051. Insolvency practitioner's security.

1051. Insolvency practitioner's security.

Wherever, under the Insolvency Rules 1986¹, any person has to appoint, or certify the appointment of, an insolvency practitioner² to any office, he is under a duty to satisfy himself that the person appointed or to be appointed has security for the proper performance of his functions³.

It is the duty of the creditors' committee in a company's administration⁴ or administrative receivership⁵, of the liquidation committee in a company's winding up⁶, and of any committee of creditors established for the purposes of a voluntary arrangement⁷, to review from time to time the adequacy of the responsible insolvency practitioner's⁸ security⁹.

In any insolvency proceedings¹⁰, the costs of the responsible insolvency practitioner's security must be defrayed as an expense of the proceedings¹¹.

1 le the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 As to insolvency practitioners and their qualification see para 8 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 12.8(1). As to the requirement for security see para 20 ante.

4 See para 197 et seq ante.

5 See para 415 et seq ante.

6 See para 629 et seq ante.

7 le under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

8 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 12.8(2).

10 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

11 Insolvency Rules 1986, SI 1986/1925, r 12.8(3). As to the prescribed order of priority of payment of such expenses in a winding up see para 810 et seq ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1052. Security in court.

1052. Security in court.

Where security has to be given to the court, otherwise than in relation to costs, it may be given by guarantee, bond or the payment of money into court¹.

A person proposing to give a bond as security must give notice² to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond³. The court must forthwith give notice to both the parties concerned of a venue⁴ for the execution of the bond and the making of any objection to the sureties⁵. The sureties must make an affidavit of their sufficiency, unless dispensed with by the party in whose favour the security is required, and must, if required by the court, attend the court to be cross-examined⁶.

1 Insolventcy Rules 1986, SI 1986/1925, r 7.58(1).

2 As to the giving of notice see para 1088 post.

3 Insolventcy Rules 1986, SI 1986/1925, r 7.58(2).

4 For the meaning of 'venue' see para 91 note 7 ante.

5 Insolventcy Rules 1986, SI 1986/1925, r 7.58(3).

6 Ibid r 7.58(4).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolventcy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1052 Security in court

TEXT AND NOTES--SI 1986/1925 r 7.58 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1053. Time limits.

1053. Time limits.

The provisions of the Civil Procedure Rules relating to time¹ apply as regards computation of time in respect of anything required or authorised by the Insolvency Rules 1986² to be done³. Where, by any provision of the Insolvency Act 1986 or the Insolvency Rules 1986 about winding up, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit⁴. The provisions of the Civil Procedure Rules relating to the court's general powers of management⁵ apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Insolvency Rules 1986⁶.

1 Ie CPR 2.8: see CIVIL PROCEDURE vol 11 (2009) PARA 88.

2 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

3 Ibid r 12.9(1) (r 12.9 substituted by SI 1999/1022).

4 Insolvency Rules 1986, SI 1986/1925, r 4.3.

5 Ie CPR 3.1(2)(a): see CIVIL PROCEDURE vol 11 (2009) PARAS 247, 249.

6 Insolvency Rules 1986 r 12.9(2) (as substituted: see note 3 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(i) In general/1054. Formal defects.

1054. Formal defects.

No insolvency proceedings¹ are to be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court².

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.55. Cf *Land and Sea Telegraph Co* (1870) 18 WR 1150; *Re City and County Bank* (1875) 10 Ch App 470 at 477; *Re Army and Navy Hotel* (1866) 31 ChD 644; *Re L'Industrie Verrière Ltd* [1914] WN 222; *Re Vidiofusion Ltd* [1975] 1 All ER 76n, [1974] 1 WLR 1548. As to the position in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 761.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1055. 'The court'; 'the registrar'.

(ii) Applications to the Court

1055. 'The court'; 'the registrar'.

Anything to be done under or by virtue of the Insolvency Act 1986 or the Insolvency Rules 1986¹ by, to or before the court may be done by, to or before a judge or the registrar². The registrar³ may authorise any act of a formal or administrative character, which is not by statute his responsibility, to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor⁴.

'The court', in relation to a company, means the court having jurisdiction to wind up the company⁵.

1 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 Ibid rr 13.1, 13.2(1). See further note 4 infra.

3 In company insolvency proceedings in the High Court, 'the registrar' means a Registrar in Bankruptcy of the High Court, except where the proceedings are in the District Registry of Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne or Preston, in which case it means the district judge: ibid rr 13.1, 13.2(4) (r 13.2(4), (5) amended by the Courts and Legal Services Act 1990 s 74(1), (3)). For the meaning of 'company insolvency proceedings' see para 459 note 5 ante.

In company insolvency proceedings in a county court, 'the district judge' means the officer of the court whose duty it is to exercise the functions which in the High Court are exercised by a district judge: Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.2(5) (as so amended).

4 Ibid rr 13.1, 13.2(2). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

The following applications must be made direct to the judge and, unless otherwise ordered, must be heard in public: (1) applications to commit any person to prison for contempt (*Practice Direction--Insolvency Proceedings* para 5.1(1)); (2) applications for urgent interim relief (eg applications pursuant to the Insolvency Act 1986 s 127 (as amended) (see para 700 ante)) prior to any winding-up order being made (*Practice Direction--Insolvency Proceedings* para 5.1(2)); (3) applications to restrain the presentation or advertisement of a petition to wind up (*Practice Direction--Insolvency Proceedings* para 5.1(3)); (4) applications for the appointment of a provisional liquidator (*Practice Direction--Insolvency Proceedings* para 5.1(4)); (5) petitions for administration orders or an interim order on such a petition (*Practice Direction--Insolvency Proceedings* para 5.1(5)); (6) applications after an administration order has been made pursuant to the Insolvency Act 1986 s 14(3) (repealed) or s 18(3) (repealed) (*Practice Direction--Insolvency Proceedings* para 5.1(6)); (7) petitions to discharge administration orders and to wind up (*Practice Direction--Insolvency Proceedings* para 5.1(7)); (8) applications pursuant to the Insolvency Act 1986 s 5(3) (as amended) to stay a winding up or discharge an administration order or for directions (see para 131 ante) where a voluntary arrangement has been approved (*Practice Direction--Insolvency Proceedings* para 5.1(8)); (9) appeals from a decision made by a county court or by a registrar of the High Court (*Practice Direction--Insolvency Proceedings* para 5.1(9)).

Subject to the following provisions, all other applications must be made to the registrar or the district judge in the first instance who may give any necessary directions and may, in the exercise of his discretion, either hear and determine it himself or refer it to the judge: *Practice Direction--Insolvency Proceedings* para 5.2.

The following matters will also be heard in public: (a) petitions to wind up (*Practice Direction--Insolvency Proceedings* para 5.3(1)); (b) public examinations (*Practice Direction--Insolvency Proceedings* para 5.3(2)); (c) all matters and applications heard by the judge except those referred by the registrar or the district judge to be heard in private or so directed by the judge to be heard (*Practice Direction--Insolvency Proceedings* para 5.3(3)).

In accordance with directions given by the Lord Chancellor, the registrar has authorised certain applications in the High Court to be dealt with by the court manager of the Companies Court pursuant to the Insolvency Rules 1986, SI 1986/1925, r 13.2(2), the applications being: (i) to extend or abridge time prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended), in connection with winding up (see rr 4.3, 12.9 (as amended); and para 1053 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(1)); (ii) for substituted service of winding-up petitions (see the Insolvency Rules 1986, SI 1986/1925, r 4.8(6) (as amended); and para 461 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(2)); (iii) to withdraw petitions (see the Insolvency Rules 1986, SI 1986/1925, r 4.15; and para 467 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(3)); (iv) for the substitution of a petitioner (see the Insolvency Rules 1986, SI 1986/1925, r 4.19 (as amended); and para 479 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(4)); (v) by the official receiver for limited disclosure of a statement of affairs (see the Insolvency Rules 1986, SI 1986/1925, r 4.35; and para 520 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(5)); (vi) by the official receiver for relief from duties imposed upon him by the Insolvency Rules 1986, SI 1986/1925 (as amended) (see r 4.47; and para 530 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(6)); (vii) by the official receiver for leave to give notice of a meeting by advertisement only (see the Insolvency Rules 1986, SI 1986/1925, r 4.59; and para 653 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(7)); (viii) to transfer proceedings from the High Court to the county court (see the Insolvency Rules 1986, SI 1986/1925, r 7.11; and para 899 ante) (*Practice Direction--Insolvency Proceedings* para 5.4(8)); and (ix) for leave to amend any originating application (*Practice Direction--Insolvency Proceedings* para 5.4(9)). In district registries all such applications must be made to the district judge: *Practice Direction--Insolvency Proceedings* para 5.4.

5 Companies Act 1985 s 744 (applied by the Insolvency Act 1986 s 251).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1055 'The court'; 'the registrar'

NOTE 3--SI 1986/1925 r 13.2(3)-(5) substituted by r 13.2(3A): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1056. Applications.

1056. Applications.

Provisions relating to applications to the court¹ apply to any application made to the court² under the Insolvency Act 1986 or the Insolvency Rules 1986³ except an application for an administration order⁴ or a petition for a winding-up order⁵.

For these purposes, except in so far as the context otherwise requires:

- 1354 (1) 'originating application' means an application to the court which is not an application in pending proceedings before the court; and
 1355 (2) 'ordinary application' means any other application to the court⁶.

Every application must be in the form appropriate to the application concerned⁷.

¹ I.e. the Insolvency Rules 1986, SI 1986/1925, rr 7.3-7.10 (as amended): see paras 1057-1060, 1078, 1080, 1083 post.

² See para 1055 ante.

³ I.e. the Insolvency Rules 1986 (as amended).

⁴ I.e. under the Insolvency Act 1986 Sch B1 (as added): see para 212 et seq ante.

⁵ Insolvency Rules 1986, SI 1986/1925, r 7.1(a), (b) (amended by SI 2003/1730). The reference to a petition for a winding-up order is a reference to such a petition under the Insolvency Act 1986 Pt IV (ss 73-219) (as amended): see para 450 et seq ante. An application in existing proceedings not in the Companies Court or the Bankruptcy Court to amend a claim to introduce a cause of action under s 423 (see para 854 ante) is not confined to the Companies Court or the Bankruptcy Court, and, therefore, the Insolvency Rules 1986, SI 1986/1925 (as amended) do not apply to such an application: *TSB Bank plc v Katz* [1994] TLR 231; cf *Moon v Franklin* (1990) Independent, 22 June.

⁶ Insolvency Rules 1986, SI 1986/1925, r 7.2(1). As to the prescribed form of originating application see rr 7.2, 12.7, Sch 4 Form 7.1; and as to the prescribed form of ordinary application see Sch 4 Form 7.2.

⁷ Ibid r 7.2(2). See further *Re Continental Assurance Co of London plc (in liquidation) (No 2)* [1998] 1 BCLC 583.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1056 Applications

TEXT AND NOTES 6, 7--SI 1986/1925 r 7.2 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1057. Form and contents of application.

1057. Form and contents of application.

Each application¹ must be in writing and must state:

- 1356 (1) the names of the parties²;
- 1357 (2) the nature of the relief or order applied for or the directions sought from the court³;
- 1358 (3) the names and addresses of the persons, if any, on whom it is intended to serve the application or that no person is intended to be served⁴;
- 1359 (4) where notice of the application is required⁵ to be given to specified persons, the names and addresses of all those persons, so far as known to the applicant⁶; and
- 1360 (5) the applicant's address for service⁷.

An originating application must set out the grounds on which the applicant claims to be entitled to the relief or order sought⁸; and the application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor⁹.

An application by a liquidator, administrator or receiver seeking release from his duty to make a prescribed part of the company's net property available for the satisfaction of unsecured debts on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits¹⁰ must be accompanied by an affidavit prepared and sworn by the liquidator, administrator or receiver¹¹. The affidavit must state the type of application in which the application arises¹², a summary of the financial position of the company¹³, the information substantiating the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits¹⁴, and whether any other insolvency practitioner is acting in relation to the company and if so his address¹⁵.

1 As to applications see para 1056 ante. For the prescribed form of originating and ordinary applications see para 1056 note 6 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.3(1)(a).

3 Ibid r 7.3(1)(b).

4 Ibid r 7.3(1)(c).

5 Ie by the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

6 Ibid r 7.3(1)(d).

7 Ibid r 7.3(1)(e).

8 Ibid r 7.3(2).

9 Ibid r 7.3(3). For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

10 Ie under the Insolvency Act 1986 s 176A(5) (as added): see para 773 ante.

- 11 Insolvency Rules 1986, SI 1986/1925, r 7.3A(1) (r 7.3A added by SI 2003/1730).
- 12 Insolvency Rules 1986, SI 1986/1925, r 7.3A(2)(a) (as added: see note 11 supra).
- 13 Ibid r 7.3A(2)(b) (as added: see note 11 supra).
- 14 Ibid r 7.3A(2)(c) (as added: see note 11 supra).
- 15 Ibid r 7.3A(2)(d) (as added: see note 11 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1057 Form and contents of application

TEXT AND NOTES 2, 8--SI 1986/1925 r 7.3(1)(a) substituted, r 7.3(2) revoked: SI 2010/686.

NOTE 9--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1058. Filing and service of application.

1058. Filing and service of application.

The application¹ must be filed in court², accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application³.

Subject to the provisions of the Insolvency Rules 1986⁴, or unless the rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of these documents, the court must fix a venue⁵ for the application to be heard⁶.

Unless the court otherwise directs, the applicant must serve a sealed copy of the application, indorsed with the venue for the hearing, on the respondent named in the application, or on each respondent if more than one⁷.

The court may direct:

- 1361 (1) that the application be served upon persons other than those specified by the relevant provision⁸;
- 1362 (2) that the giving of notice to any person may be dispensed with⁹; or
- 1363 (3) that notice be given in some way other than that specified above¹⁰.

Unless the relevant provision under which the application is made provides otherwise, and subject to the provisions described below, the application must be served at least 14 days before the date fixed for the hearing¹¹.

Where the case is one of urgency, the court may, without prejudice to its general power to extend or abridge time limits¹², either hear the application immediately, either with or without notice to, or the attendance of, other parties¹³, or authorise a shorter period of service than that mentioned above¹⁴; and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit¹⁵.

An application by a liquidator, administrator or receiver seeking release from his duty to make a prescribed part of the company's net property available for the satisfaction of unsecured debts on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits¹⁶ may be made without the application being served upon or notice being given to any other party, save that notice of the application must be given to any other insolvency practitioner who acts as such in relation to the company including any member state liquidator¹⁷.

1 As to applications see para 1056 ante. For the prescribed form of originating and ordinary applications see para 1056 note 6 ante.

2 For the meaning of 'file in court' see para 129 note 3 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.4(1).

4 *le ibid* r 7.4, r 7.4A (as added), r 7.5: see the text and notes 5-17 *infra*; and para 1059 *post*.

5 For the meaning of 'venue' see para 91 note 7 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 7.4(2).

- 7 Ibid r 7.4(3).
- 8 Ibid r 7.4(4)(a). 'The relevant provision' means the relevant provision of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).
- 9 Ibid r 7.4(4)(b).
- 10 Ibid r 7.4(4)(c).
- 11 Ibid r 7.4(5).
- 12 See para 1053 ante.
- 13 Insolvency Rules 1986, SI 1986/1925, r 7.4(6)(a).
- 14 Ibid r 7.4(6)(b).
- 15 Ibid r 7.4(6). See *Re WF Fearman Ltd* (1988) 4 BCC 139.
- 16 Ie under the Insolvency Act 1986 s 176A(5) (as added): see para 773 ante.
- 17 Insolvency Rules 1986, SI 1986/1925, r 7.4A (added by SI 2003/1730). For the meaning of 'member state liquidator' see para 460 note 15 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1058 Filing and service of application

TEXT AND NOTES 5, 6, 11--SI 1986/1925 r 7.4(2), (5) substituted: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1059. Other hearings without notice.

1059. Other hearings without notice.

Where the relevant provisions¹ do not require service of the application² on, or notice of it to be given to, any person, the court may hear the application without notice³; and, where the application is properly made without notice, the court may hear it forthwith, without fixing another venue⁴. Alternatively, the court may fix a venue for the application to be heard, in which case, so far as relevant, the provisions relating to the filing and service of applications⁵ apply⁶.

1 Ie of the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 As to applications see para 1056 ante. For the prescribed form of originating and ordinary applications see para 1056 note 6 ante.

3 Insolvency Rules 1986, SI 1986/1925 r 7.5(1).

4 Ibid r 7.5(2). For the meaning of 'venue' see para 91 note 7 ante. As to the requirement to fix a venue see r 7.4(2); and para 1058 ante.

5 Ie ibid r 7.4: see para 1058 ante.

6 Ibid r 7.5(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1059 Other hearings without notice

TEXT AND NOTES--SI 1986/1925 r 7.5 substituted by r 7.5A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1060. Hearing of application; jurisdiction of registrars.

1060. Hearing of application; jurisdiction of registrars.

Unless allowed or authorised to be made otherwise, every application¹ before the registrar² must, and every application before the judge may, be heard in chambers³.

Unless either the judge has given a general or special direction to the contrary, or it is not within the registrar's power to make the order required, the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application must be made to the registrar in the first instance⁴.

Where the application is made to the registrar, he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as he thinks fit⁵.

Nothing in these provisions precludes an application being made directly to the judge in a proper case⁶.

¹ As to applications see para 1056 ante. For the prescribed form of originating and ordinary applications see para 1056 note 6 ante.

² For the meaning of 'the registrar' see para 1055 note 3 ante.

³ Insolvency Rules 1986, SI 1986/1925, r 7.6(1). See further para 1055 note 4 ante.

⁴ Ibid r 7.6(2). See further para 1055 note 4 ante.

⁵ Ibid r 7.6(3).

⁶ Ibid r 7.6(4).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1060 Hearing of application; jurisdiction of registrars

TEXT AND NOTES--SI 1986/1925 r 7.6 substituted by r 7.6A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1061. Right of audience.

1061. Right of audience.

Official receivers and deputy official receivers¹ have right of audience in insolvency proceedings², whether in the High Court or a county court³. Subject to this, rights of audience in insolvency proceedings are the same as obtained before 29 December 1986⁴.

1 As to the official receiver see para 503 et seq ante. As to deputy official receivers see para 507 ante.

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.52(1).

4 Ibid r 7.52(2). The date mentioned in the text is the date when the Insolvency Rules 1986, SI 1986/1925, came into force: r 0.1.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1061 Right of audience

TEXT AND NOTES 1-3--SI 1986/1925 r 7.52(2) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1062. Right of attendance.

1062. Right of attendance.

Subject to the provisions described below, in company insolvency proceedings¹ any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the company or, where the company is being wound up, a contributory, is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings². Attendance may be by the person himself, or his solicitor³.

A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court must comply with the request⁴.

If the court is satisfied that the exercise by a person of his rights under these provisions has given rise to costs falling on the company's assets which would not otherwise have been incurred and ought not, in the circumstances, to fall on those assets, it may direct that the costs be paid by the person concerned, to an amount specified; and the person's rights under these provisions are to be in abeyance so long as any such costs are not paid⁵.

The court may appoint one or more persons to represent the creditors, the members or the contributories of an insolvent company, or any class of them, to have the rights conferred by these provisions, instead of the rights being exercisable by any or all of them individually; and, if two or more persons are appointed to represent the same interest, they must, if at all, instruct the same solicitor⁶.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.53(1). See *Re Greenhaven Motors Ltd (in liquidation)* [1999] 1 BCLC 635, [1999] BCC 463, CA. Without prejudice to the generality of the right to participate referred to in EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 32 para 3 (exercise of creditors' rights: see para 57 ante), a member state liquidator appointed in main proceedings is deemed to be a creditor: Insolvency Rules 1986, SI 1986/1925, r 7.64 (added by SI 2002/1307). For the meaning of 'main proceedings' see para 960 note 16 ante. For the meaning of 'member state liquidator' see para 460 note 15 ante. As to the European Regulation on Insolvency Proceedings generally see para 46 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.53(2).

4 Ibid r 7.53(3).

5 Ibid rr 7.53(4), 13.8(a).

6 Ibid r 7.53(5). The costs of such a representative are payable out of the assets if his attendance in addition to that of the liquidators is shown to be desirable: see *Re Overend, Gurney & Co, ex p Oakes and Peck* (1867) LR 3 Eq 576 at 634 (affd without touching this point sub nom *Oakes v Turquand and Harding, Peck v Turquand and Harding, Re Overend, Gurney & Co* LR 2 HL 325); *Re International Life Assurance Society, McIver's Claim* (1870) 5 Ch App 424 at 427.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1062 Right of attendance

TEXT AND NOTES--SI 1986/1925 r 7.53 revoked: SI 2010/686.

NOTE 2--SI 1986/1925 r 7.64 amended: SI 2009/642, SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ii) Applications to the Court/1063. Attendance of responsible insolvency practitioner.

1063. Attendance of responsible insolvency practitioner.

Where in any proceedings the attendance of the responsible insolvency practitioner's¹ solicitor is required, whether in court or in chambers, the insolvency practitioner himself need not attend, unless directed by the court².

1 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.54.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1063 Attendance of responsible insolvency practitioner

TEXT AND NOTES--SI 1986/1925 r 7.54 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1064. Title of proceedings.

(iii) Court Records and Returns; Access to Information

1064. Title of proceedings.

Every proceeding in company insolvency proceedings¹ must, with any necessary additions, be intitled 'IN THE MATTER OF ... (naming the company to which the proceedings relate) AND IN THE MATTER OF THE INSOLVENCY ACT 1986'².

1 le all proceedings under the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended).

2 Insolvency Rules 1986, SI 1986/1925, r 7.26(1).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1064 Title of proceedings

TEXT AND NOTES--SI 1986/1925 rr 7.26-7.31 substituted by r 7.31A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1065. Court records; returns to the Secretary of State.

1065. Court records; returns to the Secretary of State.

The court must keep records of all insolvency proceedings¹, and must cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit².

The court must from time to time send to the Secretary of State the following particulars relating to winding-up proceedings:

- 1364 (1) the full title of the proceedings, including the number assigned to each case³; and
- 1365 (2) where a winding-up order has been made, the date of the order⁴.

The Secretary of State may, on the request of any person, furnish him with particulars sent by the court under these provisions⁵.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.27.

3 Ibid r 7.29(1)(a).

4 Ibid r 7.29(1)(b). As to the Secretary of State see para 11 note 10 ante.

5 Ibid r 7.29(2).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1065 Court records; returns to the Secretary of State

TEXT AND NOTES--SI 1986/1925 rr 7.26-7.31 substituted by r 7.31A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1066. Inspection of records.

1066. Inspection of records.

The court's records of insolvency proceedings must be open to inspection by any person¹. If, however, in the case of a person applying to inspect the records the registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it; and the person may then apply forthwith and without notice to the judge, who may refuse the inspection or allow it on such terms as he thinks fit². The decision of the judge is final³.

¹ Insolvency Rules 1986, SI 1986/1925, r 7.28(1). It would appear from the wording of r 7.28(2) (see the text and note 2 infra) that the right to inspect the court's records is exercisable on application to the registrar. For the meaning of 'registrar' see para 1055 note 3 ante. As to the making of applications see para 1055 et seq ante.

² Ibid r 7.28(2). An insolvency consultant searching the records of insolvency proceedings at the Bankruptcy Registry for the names and addresses of potential customers for his services was held not to be inspecting the records for a proper purpose: *Re an Application under the Insolvency Rules 1986* [1994] 2 BCLC 104, [1994] BCC 369; cf *Ex p Creditnet Ltd* [1996] 1 WLR 1291, [1996] 2 BCLC 133 (affd sub nom *Re Austintel Ltd* [1997] 1 WLR 616, [1997] 1 BCLC 233, CA) (where leave to inspect and make multiple searches of the register of winding-up petitions for onward transmission of information to subscribers was refused to a commercial agency as this would undermine the provisions relating to advertisement of petitions (see para 462 note 7 ante)).

³ Insolvency Rules 1986, SI 1986/1925, r 7.28(3); and see *Ex p Creditnet Ltd* [1996] 1 WLR 1291, [1996] 2 BCLC 133 (affd sub nom *Re Austintel Ltd* [1997] 1 WLR 616, [1997] 1 BCLC 233, CA).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1066 Inspection of records

TEXT AND NOTES--SI 1986/1925 rr 7.26-7.31 substituted by r 7.31A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1067. File of court proceedings.

1067. File of court proceedings.

In respect of all insolvency proceedings¹, the court must open and maintain a file for each case; and, subject to directions of the registrar², all documents relating to such proceedings must be placed on the relevant file³. No proceedings may be filed in the Central Office of the High Court⁴.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 For the meaning of 'the registrar' see para 1055 note 3 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.30(1).

4 Ibid r 7.30(2).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1067 File of court proceedings

TEXT AND NOTES--SI 1986/1925 rr 7.26-7.31 substituted by r 7.31A: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1068. Right to inspect the file.

1068. Right to inspect the file.

In the case of any insolvency proceedings¹, the following have the right, at all reasonable times, to inspect the court's file² of the proceedings:

- 1366 (1) the person who, in relation to those proceedings, is the responsible insolvency practitioner³;
- 1367 (2) any duly authorised officer of the Department of Trade and Industry⁴; and
- 1368 (3) any person stating himself in writing to be a creditor of the company to which the proceedings relate⁵.

The same right of inspection is exercisable in company insolvency proceedings⁶ by every person who is, or at any time has been, a director⁷ or officer⁸ of the company to which the proceedings relate, or who is a member of the company or a contributory in its winding up⁹. The right of inspection so conferred on any person may be exercised on his behalf by a person properly authorised by him¹⁰; and any person may, by special leave of the court, inspect the file¹¹.

Such rights of inspection are not exercisable in the case of documents, or parts of documents, as to which the court directs, either generally or specially, that they are not to be made open to inspection without the court's leave; and an application for such a direction of the court may be made by the official receiver, by the person who in relation to any proceedings is the responsible insolvency practitioner, or by any party appearing to the court to have an interest¹².

If, for the purpose of powers conferred on them¹³, the Secretary of State, the Department of Trade and Industry or the official receiver requires to inspect the file of any insolvency proceedings, and requests the transmission of the file, the court must comply with the request, unless the file is for the time being in use for the court's own purposes¹⁴.

The provisions relating to inspection of court records¹⁵ also apply in respect of the court's file of any proceedings¹⁶.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 See para 1067 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.31(1)(a). For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

4 Ibid rr 7.31(1)(b), 13.13(2). As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 505-508; and COMPETITION vol 18 (2009) PARA 5.

5 Ibid rr 7.31(1)(c). For these purposes, a member state liquidator appointed in main proceedings is deemed to be a creditor, without prejudice to the generality of the right to participate referred to in EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings ('the European Regulation on Insolvency Proceedings') art 32 para 3 (exercise of creditors' rights: see para 57 ante); Insolvency Rules 1986, SI 1986/1925, r 7.64 (added by SI 2002/1307). For the meaning of 'main proceedings' see para 960 note 16 ante. For the meaning of 'member state liquidator' see para 460 note 15 ante. As to the European Regulation on Insolvency Proceedings generally see para 46 et seq ante.

6 le proceedings under the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended).

7 For the meaning of 'director' see para 5 note 2 ante.

8 For the meaning of 'officer' see para 690 ante.

9 Insolvency Rules 1986, SI 1986/1925, r 7.31(2)(a).

10 Ibid r 7.31(3).

11 Ibid r 7.31(4). A person who searches a court file without leave when that person knows that leave is required is guilty of a contempt of court: *Dobson v Hastings* [1992] Ch 394, [1992] 2 All ER 94 (inspection of report filed under the Company Directors Disqualification Act 1986 (see note 16 infra; and para 1141 post)). As to contempt of court see CONTEMPT OF COURT.

12 Insolvency Rules 1986, SI 1986/1925, r 7.31(5). As to the official receiver see para 503 et seq ante. Where the court has made a direction under r 7.31(5), a person who prior to the making of that order had a right to inspect the files under r 7.31(1), (2) (see the text and notes 1-9 supra) is put in the same position as any other member of the public and may seek leave to inspect the file under r 7.31(4) (see the text and note 11 supra): *Astor Chemical Ltd v Synthetic Technology Ltd* [1990] BCLC 1, [1990] BCC 97. See further *Practice Statement* [2002] 3 All ER 95.

13 le by the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

14 Ibid rr 7.31(6), 13.13(2). As to the Secretary of State see para 11 note 10 ante.

15 le ibid r 7.28(2), (3): see para 1066 ante.

16 Ibid r 7.31(7). Rule 7.31 does not apply to documents filed under the Company Directors Disqualification Act 1986: *Dobson v Hastings* [1992] Ch 394, [1992] 2 All ER 94.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1068 Right to inspect the file

TEXT AND NOTES--SI 1986/1925 rr 7.26-7.31 substituted by r 7.31A: SI 2010/686.

TEXT AND NOTE 4--For 'Department of Trade and Industry' read 'Department for Business, Enterprise and Regulatory Reform': SI 1986/1925 r 13.13(2) (amended by SI 2007/3224).

NOTE 5--SI 1986/1925 r 7.64 amended: SI 2009/642, SI 2010/686. See also *Franbar Holdings Ltd v Patel* [2008] EWHC 1534 (Ch), [2009] 1 BCLC 1.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1069. Filing of Gazette notices and advertisements.

1069. Filing of Gazette notices and advertisements.

In any court in which insolvency proceedings¹ are pending, an officer of the court must file a copy of every issue of the Gazette² which contains an advertisement relating to those proceedings³.

Where there appears in a newspaper an advertisement relating to insolvency proceedings pending in any court, the person inserting the advertisement must file a copy of it in that court; and the copy of the advertisement must be accompanied by, or have indorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance⁴.

An officer of any court in which insolvency proceedings are pending must from time to time file a memorandum giving the date of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending; and the officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum⁵.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 As to the Gazette, and the gazetting of notices, see para 1048 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.32(1). As to the evidential value of notices in the Gazette and the duties to cause further gazetting in the event of a variation of an order, error or inaccuracy see para 1048 ante.

4 Ibid r 7.32(2).

5 Ibid r 7.32(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1069 Filing of Gazette notices and advertisements

TEXT AND NOTES--SI 1986/1925 r 7.32 revoked: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1070. Office copies of documents.

1070. Office copies of documents.

Any person who has the right to inspect the court file of insolvency proceedings¹ may require the court to provide him with an office copy of any document from the file²; and a person's rights under this provision may be exercised on his behalf by his solicitor³. An office copy so provided by the court must be in such form as the registrar⁴ thinks appropriate, and must bear the court's seal⁵.

1 Ibid under the Insolvency Rules 1986, SI 1986/1925 (as amended); see para 1068 ante. For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Ibid r 7.61(1). As to the fee payable where this right is exercised see para 1072 post.

3 Ibid r 7.61(2). For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

4 For the meaning of 'the registrar' see para 1055 note 3 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 7.61(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1070 Office copies of documents

NOTE 3--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1071. Confidentiality of documents.

1071. Confidentiality of documents.

Where in insolvency proceedings¹ the responsible insolvency practitioner² considers, in the case of a document forming part of the records of the insolvency, that:

- 1369 (1) it should be treated as confidential; or
- 1370 (2) it is of such a nature that its disclosure would be calculated to be injurious to the interests of the company's creditors or its members or the contributories in its winding up,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it³. The persons to whom the insolvency practitioner may so refuse inspection include the members of a liquidation committee or a creditors' committee⁴.

Where the insolvency practitioner determines so to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled; and the court may either overrule it altogether, or sustain it subject to such conditions, if any, as it thinks fit to impose⁵.

Nothing in these provisions, however, entitles the insolvency practitioner to decline to allow the inspection of any proof or proxy⁶.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 12.13(1).

4 Ibid r 12.13(2).

5 Ibid r 12.13(3). As to appeals see para 1030 et seq ante; and as to the making of applications see para 1055 et seq ante.

6 Ibid r 12.13(4) (added by SI 1987/1919).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1072. Right to copy documents.

1072. Right to copy documents.

Where a right is conferred¹ on any person to inspect documents, the right includes that of taking copies of those documents, on payment, in the case of documents on the court's file of proceedings, of the prescribed fee chargeable², and, otherwise, of the appropriate fee³.

Where the responsible insolvency practitioner or the official receiver⁴ is requested by a creditor, member, contributory or member of a liquidation or creditors' committee to supply copies of any documents, he is entitled to require the payment of the appropriate fee in respect of the supply of the documents⁵.

1 Ie under the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 Ie under any order made under the Supreme Court Act 1981 s 130 or the County Courts Act 1984 s 128.

3 Insolvency Rules 1986, SI 1986/1925, r 12.15 (amended by SI 1987/1919). The 'appropriate fee' means 15 pence per A4 or A5 page, and 30 pence per A3 page: Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.11(b).

4 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante. As to the official receiver see para 503 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 12.15A (added by SI 1987/1919).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1072 Right to copy documents

NOTE 2--The prescribed fee is now chargeable under any order made under the Courts Act 2003 s 92: SI 1986/1925 r 12.15 (amended by SI 2005/527).

Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1073. Right to have list of creditors.

1073. Right to have list of creditors.

In any proceedings relating to company administration, a creditors' voluntary winding up or a winding up by the court, a creditor¹ who has the right² to inspect documents on the court file also has the right to require the responsible insolvency practitioner³ to furnish him with a list of the company's creditors and the amount of their respective debts, except where a statement of the company's affairs has been filed in court⁴ or, in the case of a creditors' voluntary winding up, has been delivered to the registrar of companies⁵. The insolvency practitioner, on being required by any person to furnish the list, must send it to him, but is entitled to charge the appropriate fee⁶ for doing so⁷.

1 For these purposes, a member state liquidator appointed in main proceedings in relation to a person is deemed to be a creditor: Insolvency Rules 1986, SI 1986/1925, r 12.17(2A) (added by SI 2002/1307). For the meaning of 'member state liquidator' see para 460 note 15 ante. For the meaning of 'main proceedings' see para 460 note 16 ante.

2 See under the Insolvency Rules 1986, SI 1986/1925, r 7.31: see para 1068 ante.

3 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

4 For the meaning of 'file in court' see para 129 note 3 ante.

5 Insolvency Rules 1986, SI 1986/1925, r 12.17(1)(a), (b), (2). As to the statement of affairs see para 519 et seq ante; and as to the delivery of the statement of affairs in a creditors' voluntary winding up to the registrar of companies see para 947 ante. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

6 For the meaning of 'the appropriate fee' see para 1072 note 3 ante.

7 Insolvency Rules 1986, SI 1986/1925, r 12.17(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1073 Right to have list of creditors

TEXT AND NOTES--SI 1986/1925 r 12.17 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iii) Court Records and Returns; Access to Information/1074. False claim of status as creditor etc.

1074. False claim of status as creditor etc.

Where provision is made¹ for creditors, members of a company or contributories in a company's winding up to have a right to inspect any documents, whether on the court's file or in the hands of a responsible insolvency practitioner² or other person, it is an offence for a person, with the intention of obtaining a sight of documents which he has no right to inspect, falsely to claim a status which would entitle him to inspect them³. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁴.

1 Ie under the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 12.18(1).

4 Ibid rr 12.18(2), 12.21, Sch 5. The Insolvency Act 1986 s 431 (as amended) (summary proceedings: see para 947 ante) has effect in relation to such an offence as it does to offences under that Act: Insolvency Rules 1986, SI 1986/1925, r 12.21(5). As to the statutory maximum see para 10 note 1 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1075. Books and papers as evidence.

(iv) Evidence

1075. Books and papers as evidence.

Where a company is being wound up, all books and papers¹ of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them².

¹ For the meaning of 'books and papers' see para 906 note 8 ante.

² Insolvency Act 1986 s 191. A contributory may adduce evidence to show that the books are not correct, but the burden of showing that they are incorrect lies on him: *Arnot's Case* (1887) 36 ChD 702 at 712, CA; *Re Great Northern Salt and Chemical Works, ex p Kennedy* (1890) 44 ChD 472 at 483. Entries in the minute book may be sufficient admission of the company's liability to pay a claim: *Re Teignmouth and General Mutual Shipping Association, Martin's Claim* (1872) LR 14 Eq 148. As to the register of members as evidence see COMPANIES vol 14 (2009) PARA 345.

As to the admissibility in evidence generally of other statements and documents see para 1046 et seq ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1076. Affidavits.

1076. Affidavits.

The practice and procedure of the High Court with regard to affidavits, their form and contents, and the procedure governing their use, apply to all insolvency proceedings¹. Where in insolvency proceedings an affidavit is made by the official receiver or the responsible insolvency practitioner², the deponent must state the capacity in which he makes it, the position which he holds, and the address at which he works³. Notwithstanding the provisions whereby an affidavit is not to be sworn before a party's own solicitor⁴, a creditor's affidavit of debt⁵ may be sworn before his own solicitor⁶; and the official receiver, any deputy official receiver, or any officer of the court duly authorised in that behalf, may take affidavits and declarations⁷.

Subject to certain exceptions⁸, where the Insolvency Rules 1986 provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative⁹. Where a witness statement can thus be used, any prescribed form¹⁰ must be modified as necessary¹¹.

1 Insolvency Rules 1986, SI 1986/1925, r 7.57(1) (r 7.57 substituted by SI 1999/1022). For the meaning of 'insolvency proceedings' see para 459 note 5 ante. As to the rules and practice referred to see CPR 32.15-32.17; *Practice Direction--Written Evidence* (2001) PD 32; and CIVIL PROCEDURE vol 11 (2009) PARAS 989-990.

2 As to the official receiver see para 503 et seq ante. For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.57(2) (as substituted: see note 1 supra).

4 See CPR 32.16; *Practice Direction--Written Evidence* (2001) PD 32 para 9.2; and CIVIL PROCEDURE vol 11 (2009) PARA 990.

5 See para 779 ante.

6 Insolvency Rules 1986, SI 1986/1925, r 7.57(3) (as substituted: see note 1 supra).

7 Ibid r 7.57(3) (as substituted: see note 1 supra).

8 The exceptions are: ibid rr 3.4, 4.33 (statement of affairs: see paras 405, 520 ante), r 4.42 (further disclosure: see para 525 ante), rr 4.39, 4.40 (accounts: see paras 524, 965 ante), r 4.43 (as amended) (reports by official receiver: see para 527 ante), r 4.77 (claims: see para 779 ante), and rr 9.3, 9.4 (examinations: see paras 681-682 ante): see r 7.57(6) (as substituted (see note 1 supra); and amended by SI 2003/1730).

9 Insolvency Rules 1986, SI 1986/1925, r 7.57(5) (as substituted: see note 1 supra). The taking by the official receiver of affidavits and declarations pursuant to r 7.57(5) (as substituted) may not be contracted out: see the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386, art 3(1), Schedule para 21. As to the contracting out of the official receiver's functions generally see paras 505-506 ante.

11 Ie prescribed under Insolvency Rules 1986, SI 1986/1925, rr 7.57, 12.7 (as amended): see para 1076 post.

12 Ibid r 7.57(7) (as substituted: see note 1 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1076 Affidavits

TEXT AND NOTES--SI 1986/1925 r 7.57 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1077. Use of affidavit evidence.

1077. Use of affidavit evidence.

In any proceedings evidence may be given by affidavit unless by any provision of the Insolvency Rules 1986¹ it is otherwise provided or the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit². Where, after such an order has been made, the person in question does not attend, his affidavit may not be used in evidence without the leave of the court³.

1 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 Ibid r 7.7(1). Cross-examination will be ordered where it is necessary for fairly disposing of the issue and may be ordered where the affidavit evidence is not contradicted by sworn evidence: *Re Bank of Credit and Commerce International SA (No 6)*, *Mahfouz v Morris* [1994] 1 BCLC 450.

3 Insolvency Rules 1986, SI 1986/1925, r 7.7(2).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1078. Filing and service of affidavits.

1078. Filing and service of affidavits.

Unless the provision of the Insolvency Act 1986 or the Insolvency Rules 1986¹ under which the application is made provides otherwise, or the court otherwise allows:

- 1371 (1) if the applicant intends to rely at the first hearing on affidavit evidence, he must file the affidavit or affidavits, if more than one, in court² and serve a copy or copies on the respondent, not less than 14 days before the date fixed for the hearing³; and
- 1372 (2) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he must file the affidavit or affidavits, if more than one, in court and serve a copy or copies on the applicant, not less than seven days before the date fixed for the hearing⁵.

Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application⁴.

- 1 le the Insolvency Rules 1986, SI 1986/1925 (as amended).
- 2 For the meaning of 'file in court' see para 129 note 3 ante.
- 3 Insolvency Rules 1986, SI 1986/1925, r 7.8(1)(a).
- 4 Ibid r 7.8(1)(b).
- 5 Ibid r 7.8(2).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1078 Filing and service of affidavits

TEXT AND NOTE 4--SI 1986/1925 r 7.8(2) revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1079. Swearing affidavits.

1079. Swearing affidavits.

An affidavit required to be sworn under the provisions of or for the purposes of the statutory provisions relating to the winding up of registered companies¹, may be sworn in the United Kingdom, or elsewhere within Her Majesty's dominions, before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside those dominions². All courts, judges, justices, commissioners and persons acting judicially must take judicial notice of the seal, stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of the winding-up provisions of the Insolvency Act 1986³.

1 Ie the Insolvency Act 1986 Pt IV (ss 73-219) (as amended): see para 432 et seq ante.

2 Ibid s 200(1). As to the swearing of affidavits see also CPR 32.15-32.17; *Practice Direction--Written Evidence* (2001) PD 32 paras 6-9; and CIVIL PROCEDURE vol 11 (2009) PARAS 989-990. For the meaning of 'United Kingdom' see para 12 note 2 ante. As to Her Majesty's dominions see COMMONWEALTH vol 13 (2009) PARA 707.

3 Insolvency Act 1986 s 200(2).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1080. Use of reports.

1080. Use of reports.

A report may be filed in court¹ instead of an affidavit:

- 1373 (1) in any case, by the official receiver or a deputy official receiver²; or
- 1374 (2) unless the application involves other parties or the court otherwise orders, by an administrator, a liquidator, a provisional liquidator, or a special manager³.

In any case where a report is so filed instead of an affidavit, the report must be treated for the purposes of any hearing before the court⁴ as if it were an affidavit⁵.

Any report filed by the official receiver in accordance with the Insolvency Act 1986 or the Insolvency Rules 1986⁷ is prima facie evidence of any matter contained in it⁷.

¹ For the meaning of 'file in court' see para 129 note 3 ante.

² Insolvency Rules 1986, SI 1986/1925, r 7.9(1)(a). As to the official receiver see para 503 et seq ante. As to deputy official receivers see para 507 ante.

³ Ibid r 7.9(1)(b).

⁴ Ie for the purposes of ibid r 7.8(1): see para 1078 ante.

⁵ Ibid r 7.9(2).

⁶ Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

⁷ Ibid r 7.9(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1080 Use of reports

TEXT AND NOTES 5, 6--SI 1986/1925 r 7.9(3) substituted by r 7.9(3A): SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1081. Commission for receiving evidence.

1081. Commission for receiving evidence.

When a company is wound up in England and Wales or in Scotland, the court may refer the whole or part of the examination of witnesses to a specified¹ county court in England and Wales², or to the sheriff principal for a specified sheriffdom in Scotland³, or to the High Court in Northern Ireland or a specified Northern Ireland county court⁴.

Any person exercising jurisdiction as a judge of the court to which the reference is made or, in Scotland, the sheriff principal to whom it is made, is then, by virtue of these provisions, a commissioner for the purpose of taking the evidence of those witnesses⁵.

In addition to any powers which he might otherwise lawfully exercise, the judge or sheriff principal has in the matter referred to him the same power of summoning and examining witnesses, of requiring the production and delivery of documents, or punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order⁶. The examination so taken must be returned or reported to the court which made the order in such manner as that court directs⁷.

¹ For these purposes, 'specified' means specified in the order of the winding-up court: Insolvency Act 1986 s 197(1).

² Ibid s 197(1)(a).

³ Ibid s 197(1)(b).

⁴ Ibid s 197(1)(c). The provisions of s 197 extend to Northern Ireland: s 197(5).

⁵ Ibid s 197(2).

⁶ Ibid s 197(3).

⁷ Ibid s 197(4).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(iv) Evidence/1082. Examination in Scotland.

1082. Examination in Scotland.

The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested in it by reason of his being a contributory¹. The order or commission to take the examination must be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time². The sheriff principal must summon that person to appear before him, at a time and place to be specified in the summons, for examination on oath as a witness or as a haver³, and to produce any books or papers called for which are in his possession or power⁴. The sheriff principal may take the examination either orally or on written interrogatories, and must report it in writing in the usual form to the court⁵. With the report, the sheriff principal must transmit the books and papers produced, if the originals are required and specified by the order or commission, or otherwise copies of or extracts from them authenticated by him⁶. If any objection is stated to the sheriff principal by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff principal may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court⁷.

1 Insolventcy Act 1986 s 198(1).

2 Ibid s 198(2).

3 A 'haver' is one who has possession of a deed or writing which is called for by a court of justice.

4 Insolventcy Act 1986 s 198(2).

5 Ibid s 198(3).

6 Ibid s 198(3).

7 Ibid s 198(6). Failure to appear or refusal to be examined or to make the production required is dealt with according to the law of Scotland: see s 198(4). The sheriff principal and witnesses are entitled to the usual fees and allowances according to the law and practice of Scotland: see s 198(5).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(v) Orders/1083. Adjournment of hearing; directions.

(v) Orders

1083. Adjournment of hearing; directions.

The court may adjourn the hearing of an application¹ on such terms, if any, as it thinks fit².

The court may at any time give such directions as it thinks fit as to:

- 1375 (1) service or notice of the application on or to any person, whether in connection with the venue³ of a resumed hearing or for any other purpose⁴;
- 1376 (2) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application⁵;
- 1377 (3) the manner in which any evidence is to be adduced at a resumed hearing and in particular, but without prejudice to the generality of this provision, as to the taking of evidence wholly or in part by affidavit or orally, the cross-examination either before the judge or registrar on the hearing in the court or in chambers of any deponents to affidavits and any report to be given by the official receiver, an administrator, a liquidator, a provisional liquidator, or a special manager⁶; and
- 1378 (4) the matters to be dealt with in evidence⁷.

1 As to the making of applications see para 1055 et seq ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.10(1). Where an adjournment is obtained for a specific purpose (eg to file evidence) then it is incumbent on the solicitors of the party who sought the adjournment to inform the other parties' solicitors or the court if the adjournment is in fact to be used for another purpose before that other purpose is implemented: *Re Pinstripe Farming Co Ltd* [1996] 2 BCLC 295.

3 For the meaning of 'venue' see para 91 note 7 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 7.10(2)(a).

5 Ibid r 7.10(2)(b).

6 Ibid r 7.10(2)(c).

7 Ibid r 7.10(2).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1083 Adjournment of hearing; directions

TEXT AND NOTES 4-7--SI 1986/1925 r 7.10(2) amended, r 7.10(3) added: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(v) Orders/1084. Payment into court.

1084. Payment into court.

The Civil Procedure Rules relating to payment into and out of court of money lodged in court as security for costs¹ apply to money lodged in court under the Insolvency Rules 1986².

1 As to security for costs see CPR 25.12-25.14; and CIVIL PROCEDURE Vol 11 (2009) PARAS 745-748.

2 Insolvency Rules 1986, SI 1986/1925, r 7.59 (substituted by SI 1999/1022).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(v) Orders/1085. Requests for further information.

1085. Requests for further information.

Any party to insolvency proceedings¹ may apply to the court for an order that any other party either clarify any matter which is in dispute in the proceedings² or give additional information in relation to any such matter³, in accordance with the Civil Procedure Rules relating to further information⁴. A party to insolvency proceedings may also apply to the court for an order to obtain disclosure from any other party in accordance with the Civil Procedure Rules relating to disclosure and inspection of documents⁵. An application for such an order may be made without notice being served on any other party⁶.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.60(1)(a)(i) (r 7.60 substituted by SI 1999/1022).

3 Insolvency Rules 1986, SI 1986/1925, r 7.60(1)(a)(ii) (as substituted: see note 2 supra).

4 As to further information see CPR Pt 18; and CIVIL PROCEDURE vol 11 (2009) PARAS 611-612.

5 Insolvency Rules 1986, SI 1986/1925, r 7.60(1)(b) (as substituted: see note 2 supra). As to disclosure and inspection of documents see CPR Pt 31; and CIVIL PROCEDURE vol 11 (2009) PARAS 112, 538 et seq.

6 Insolvency Rules 1986, SI 1986/1925, r 7.60(2) (as substituted: see note 2 supra). As to the making of applications see para 1055 et seq ante. See also *Re Primlaks (UK) Ltd (No 2)* [1990] BCLC 234.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(v) Orders/1086. Order for inspection of books and papers.

1086. Order for inspection of books and papers.

At any time after making a winding-up order, the court may make such order as it thinks just for inspection by creditors and contributories of the company of its books and papers¹. The power to order inspection, however, applies only to books and papers in the company's possession²; it does not empower the court to decide any question of right against third parties who possess the books and claim a right to possession³.

The right conferred upon members and creditors of a company, or persons who are neither creditors nor members, by statute or the company's regulations, to inspect its register of shares or mortgages ceases when the winding up commences, and a creditor or contributory may then only obtain inspection by order of the court⁴. Under the usual order to inspect and take copies, the applicant may take copies himself without paying for them⁵.

An order for inspection will only be made on good cause being shown⁶. Inspection is always refused if the applicant requires it to enable him or other persons to establish claims for their personal benefit against directors or promoters⁷.

¹ Insolvency Act 1986 s 155(1); and see *Re Imperial Land Co of Marseilles* [1882] WN 173. For the meaning of 'books and papers' see para 906 note 8 ante.

² Insolvency Act 1986 s 155(1). Nothing in s 155 excludes or restricts any statutory rights of a government department or person acting under its authority: s 155(2). The reference to a government department must be construed as including references to any part of the Scottish Administration: s 155(3) (added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 85).

³ *Re North Brazilian Sugar Factories Ltd* (1887) 37 ChD 83, CA. Contributories of a petition facing criminal charges will not be allowed to inspect in order to prepare their defence, since the inspection was not for the purposes of the winding up and in any event the documents were not in the company's possession as they had been seized by the Serious Fraud Office: *Re DPR Futures Ltd* [1989] 1 WLR 778, [1989] BCLC 634.

⁴ *Re Yorkshire Fibre Co* (1870) LR 9 Eq 650; *Re Birmingham Banking Co, ex p Brinsley* (1866) 36 LJ Ch 150; *Re Kent Coalfields Syndicate* [1898] 1 QB 754, CA; *Somerset v Land Securities Co* [1897] WN 29. As to this right of inspection see COMPANIES vol 14 (2009) PARA 349; COMPANIES vol 15 (2009) PARA 1297.

⁵ *Re Arauco Co* [1899] WN 134.

⁶ *Re Birmingham Banking Co, ex p Brinsley* (1866) 36 LJ Ch 150; *Re Imperial Land Co of Marseilles* [1882] WN 173.

⁷ *Re Metropolitan and Provincial Bank, ex p Davis* (1868) 16 WR 668.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1087. General provisions as to service.

(vi) Service of Proceedings and Notices

1087. General provisions as to service.

Subject to the provisions relating to service by post¹, the Civil Procedure Rules concerned with the service of documents² apply as regards any matter relating to the service of documents and the giving of notice in insolvency proceedings³.

¹ I.e. the Insolvency Rules 1986, SI 1986/1925, r 12.10 (as amended): see para 1090 post.

² I.e. CPR Pt 6 (see CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq).

³ Insolvency Rules 1986, SI 1986/1925, r 12.11 (substituted by SI 1999/1022). For the meaning of 'insolvency proceedings' see para 459 note 5 ante. As to service outside the jurisdiction see para 1091 post.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1087 General provisions as to service

TEXT AND NOTE 1--After 'service by post,' read 'and the provisions relating to service outside the jurisdiction (see PARA 800)': SI 1986/1925 r 12.11 (amended by SI 2005/527).

NOTE 2--CPR Pt 6 substituted: SI 2008/2178.

NOTE 3--SI 1986/1925 r 12.11 applies to notices of meetings: *Re T&N Ltd* [2006] EWHC 842 (Ch), [2006] 1 WLR 2831.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1088. Method of service and giving notice.

1088. Method of service and giving notice.

A reference in the Insolvency Rules 1986¹ to giving notice, or to delivering, sending or serving any document, means that the notice or document may be sent by post, unless under a particular rule personal service is expressly required²; and any form of post may be used, unless under a particular rule a specified form is expressly required³. Personal service of a document is permissible in all cases⁴.

Notice of the venue⁵ fixed for an application⁶ may be given by service⁷ of the sealed copy of the application⁸.

Where under the Insolvency Act 1986 or the Insolvency Rules 1986 a notice or other document is required or authorised to be given to a person, it may, if he has indicated that his solicitor⁹ is authorised to accept service on his behalf, be given instead to the solicitor¹⁰.

Where two or more persons are acting jointly as the responsible insolvency practitioner¹¹ in any proceedings, delivery of a document to one of them is to be treated as delivery to them all¹².

1 Ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 Ibid rr 13.1, 13.3(1). In *Re a Debtor (No 64 of 1992)* [1994] 2 All ER 177, [1994] 1 WLR 264, it was held that a notice sent to a branch office of a building society rather than the head office was not properly served and that actual receipt of the notice was required to constitute service.

3 Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.3(2).

4 Ibid rr 13.1, 13.3(3).

5 For the meaning of 'venue' see para 91 note 7 ante.

6 See para 1058 ante.

7 Ie under the Insolvency Rules 1986, SI 1986/1925, r 7.4(3): see para 1058 ante.

8 Ibid rr 13.1, 13.3(4).

9 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

10 Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.4.

11 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

12 Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.5.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1088 Method of service and giving notice

TEXT AND NOTES 1-4--SI 1986/1925 r 13.3(3) revoked: SI 2010/686.

NOTE 9--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1089. Notices.

1089. Notices.

All notices required or authorised by or under the Insolvency Act 1986 or the Insolvency Rules 1986¹ to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way².

Where in any proceedings a notice is required to be sent or given by the official receiver or by the responsible insolvency practitioner³, the sending or giving of it may be proved by means of a certificate, in the case of the official receiver, by him or a member of his staff, and, in the case of the insolvency practitioner, by him or his solicitor⁴, or a partner or an employee of either of them, that the notice was duly posted⁵.

In the case of a notice to be sent or given by a person other than the official receiver or insolvency practitioner, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person, naming him, to do so⁶.

A certificate under these provisions may be indorsed on a copy or specimen of the notice to which it relates⁷.

1 le the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 Ibid r 12.4(1).

3 As to the official receiver see para 503 et seq ante. For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

4 For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

5 Insolvency Rules 1986, SI 1986/1925, r 12.4(2).

6 Ibid r 12.4(3).

7 Ibid r 12.4(4).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1089 Notices

TEXT AND NOTES--SI 1986/1925 r 12.4 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1090. Service by post.

1090. Service by post.

For a document to be properly served by post, it must be contained in an envelope addressed to the person on whom service is to be effected, and pre-paid for either first or second class post¹. A document to be served by post may be sent to the last known address of the person to be served².

Where first class post is used, the document is treated as served on the second business day³ after the date of posting, unless the contrary is shown⁴; and where second class post is used, the document is treated as served on the fourth business day after the date of posting, unless the contrary is shown⁵. The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained⁶.

- 1 Insolvency Rules 1986, SI 1986/1925, r 12.10(1).
- 2 Ibid r 12.10(1A) (added by SI 1987/1919).
- 3 For the meaning of 'business day' see para 113 note 4 ante.
- 4 Insolvency Rules 1986, SI 1986/1925, r 12.10(2).
- 5 Ibid r 12.10(3).
- 6 Ibid r 12.10(4).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1090 Service by post

NOTES--SI 1986/1925 r 12.10 applies to notices of meetings: *Re T&N Ltd* [2006] EWHC 842 (Ch), [2006] 1 WLR 2831.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1091. Service outside the jurisdiction.

1091. Service outside the jurisdiction.

The rules and practice applicable to service out of the jurisdiction of the Supreme Court¹ do not apply in insolvency proceedings². Instead, where for the purposes of such proceedings any process or order of the court, or other document, is required to be served on a person who is not in England and Wales, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit³.

An application⁴ for such an order must be supported by an affidavit stating the grounds on which the application is made, and in what place or country the person to be served is, or probably may be found⁵.

Leave of the court is not required to serve anything referred to above on a member state liquidator⁶.

1 Ie CPR 6.17-6.31: see CIVIL PROCEDURE vol 11 (2009) PARAS 156, 168 et seq.

2 Insolvency Rules 1986, SI 1986/1925, r 12.12(1) (substituted by SI 1999/1022). The Insolvency Rules 1986, SI 1986/1925, r 12.12(1) (as substituted) refers to RSC Ord 11, which formerly made provision in this regard; reference should now, however, be made to the provisions of the Civil Procedure Rules (see note 1 supra). For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 12.12(3). The provisions of r 12.12 (as amended) give the court a much wider discretion to order a mode of service than under CPR Pt 6 and there is no obligation to exercise the discretion under the Insolvency Rules 1986, SI 1986/1925, r 12.12 in accordance with CPR Pt 6 or on grounds analogous to them: see *Re Busytoday Ltd, Popely v Lewis* [1992] 4 All ER 61, [1992] 1 WLR 683; *Re Paramount Airways Ltd (in administration)* [1993] Ch 223, [1992] 3 All ER 1, CA (all of which were decided in relation to RSC Ord 11 (see note 2 supra)). Before the court will exercise its discretion to grant leave, the court must be satisfied that there is a real issue between the claimant and the defendant which the claimant may reasonably ask the court to try: *Re Paramount Airways Ltd (in administration)* supra; *Re Howard Holdings Inc* [1998] BCC 549; *Miller v Bain* [2002] BCC 899, [2003] BPIR 959. Where the person sought to be served is a British subject, or he is a foreign subject who has in some way made himself amenable to the jurisdiction of the English courts, leave to serve outside the jurisdiction may be given: *Re Seagull Manufacturing Co Ltd (in liquidation)* [1993] Ch 345, [1993] 2 All ER 980, CA (leave to serve out granted for an order for public examination); cf *Re Paramount Airways Ltd (in administration)* supra (where leave was granted to serve a foreign bank which had no connection with the jurisdiction in proceedings to set aside a transaction under the Insolvency Act 1986 s 238 (see para 843 et seq ante)). Leave is required to serve a petition claiming relief under the Companies Act 1985 s 459 (as amended) as well as a winding-up order: *Re Harrods (Buenos Aires) Ltd* [1992] Ch 72, [1991] 4 All ER 334, CA.

4 As to the making of applications see para 1055 et seq ante.

5 Insolvency Rules 1986, SI 1986/1925, r 12.12(4).

6 Ibid r 12.12(5) (added by SI 2002/1307). For the meaning of 'member state liquidator' see para 460 note 15 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1091 Service outside the jurisdiction

NOTES--SI 21986/1925 r 12.12 does not apply to notices of meetings: *Re T&N Ltd* [2006] EWHC 842 (Ch), [2006] 1 WLR 2831.

NOTES 1, 3--CPR Pt 6 substituted: SI 2008/2178.

NOTES 1, 2--SI 1986/1925 r 12.12(1) amended: SI 2005/527.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1092. Notices sent simultaneously to the same person.

1092. Notices sent simultaneously to the same person.

Where, under the Insolvency Act 1986 or the Insolvency Rules 1986¹, a document of any description is to be sent to a person, whether or not as a member of a class of persons to whom that same document is to be sent, it may be sent as an accompaniment to any other document or information which the person is to receive, with or without modification or adaptation of the form applicable to that document².

¹ ie the Insolvency Rules 1986, SI 1986/1925 (as amended).

² Ibid r 12.14.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1093. Non-receipt of notice of meeting.

1093. Non-receipt of notice of meeting.

Where a meeting of creditors or other persons is summoned by notice¹, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it².

¹ ie in accordance with the Insolvency Act 1986 or the Insolvency Rules 1986, SI 1986/1925 (as amended).

² Ibid r 12.16; and see *Re a Debtor (No 64 of 1992)* [1994] 2 All ER 177, [1994] 1 WLR 264.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1094. Service of order staying concurrent proceedings and remedies.

1094. Service of order staying concurrent proceedings and remedies.

Where, in insolvency proceedings¹, the court makes an order staying any action, execution or other legal process against the property of a company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed².

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.56. As to service by post see para 1090 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vi) Service of Proceedings and Notices/1095. Notices where execution is overtaken by company's insolvency.

1095. Notices where execution is overtaken by company's insolvency.

Where execution has been taken out against property of a company, and notice is given under the Insolvency Act 1986 to the enforcement officer¹ or other officer charged with the execution², such notice must be in writing and be delivered by hand at, or sent by recorded delivery to, the office of the enforcement officer or, as the case may be, of the officer charged with the execution³.

¹ The Insolvency Rules 1986, SI 1986/1925, r 12.19(1) refers to 'a sheriff' for these purposes but, by virtue of the amendments made to the Insolvency Act 1986 s 184 by the Courts Act 2003 (see para 884 ante), this should be read as a reference to an enforcement or other officer. 'Enforcement officer' means an individual who is authorised to act under the Courts Act 2003: Insolvency Act 1986 s 184(6) (amended by the Courts Act 2003 s 109(1), Sch 8 para 296(1), (4)).

² If notice is given under the Insolvency Act 1986 s 184(1) (as amended) that a winding-up order has been made against the company, or that a provisional liquidator has been appointed, or that a resolution for voluntary winding up has been passed (see para 884 ante) (Insolvency Rules 1986, SI 1986/1925, r 12.19(1) (a)), or under the Insolvency Act 1986 s 184(4) (as amended) that a winding-up petition has been presented or that a meeting has been called at which there is to be proposed a resolution for voluntary winding up, or that such a resolution has been passed (see para 885 ante) (Insolvency Rules 1986, SI 1986/1925, r 12.19(1)(b)).

³ Ibid r 12.19(2). Where the execution is in a county court, and the officer in charge of it is the registrar of that court, then, if: (1) there is filed in that court in respect of the company a winding-up petition; or (2) there is made by that court in respect of the company a winding-up order or an order appointing a provisional liquidator, the Insolvency Act 1986 s 184 (as amended) is deemed satisfied as regards the requirement of a notice to be served on, or given to, the officer in charge of the execution: Insolvency Rules 1986, SI 1986/1925, r 12.19(3).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1095 Notices where execution is overtaken by company's insolvency

TEXT AND NOTES--SI 1986/1925 r 12.19 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1096. General principles.

(vii) Costs and Detailed Assessment

1096. General principles.

Civil Procedure Rules applicable to the costs of proceedings in the Supreme Court and the county court¹ apply, with any necessary modifications, to the costs of insolvency proceedings², subject to any provision to inconsistent effect made by the provisions of the Insolvency Rules 1986 dealing with costs and detailed assessment³. In the Supreme Court, subject to any express provisions and to the rules of court, costs are in the discretion of the court, and the court has full power to determine by whom and to what extent the costs are to be paid⁴.

1 Ie CPR Pt 43 (scope of cost rules and definitions: see CIVIL PROCEDURE vol 12 (2009) PARA 1734), Pt 44 (general rules about costs: see CIVIL PROCEDURE vol 12 (2009) PARA 1737 et seq), Pt 45 (fixed costs: see CIVIL PROCEDURE vol 12 (2009) PARA 1760 et seq), Pt 47 (procedure for detailed assessment of costs and default provisions: see CIVIL PROCEDURE vol 12 (2009) PARA 1779 et seq) and Pt 48 (special cases: see CIVIL PROCEDURE vol 12 (2009) PARA 1803 et seq).

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.33 (substituted by SI 1999/1022). As to costs and detailed assessment see rr 7.34-7.42 (as amended); and paras 1097-1104 post.

5 See the Supreme Court Act 1981 s 51(1), (3) (as substituted); *Re Gosssett (Groundworks) Ltd* [1988] BCLC 363, 4 BCC 372; and CIVIL PROCEDURE vol 12 (2009) PARA 1732. As to the priority of costs in winding up see para 804 ante; and as to the liquidator's costs see para 589 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1096 General principles

TEXT AND NOTES 1-3--SI 1986/1925 r 7.33 substituted by r 7.33A: SI 2010/686.

NOTE 5--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1097. Requirement to decide costs by detailed assessment.

1097. Requirement to decide costs by detailed assessment.

Subject to the provisions described below, where the costs, charges or expenses of any person are payable out of the company's assets, the amount of those costs, charges or expenses must be decided by detailed assessment unless agreed between the responsible insolvency practitioner¹ and the person entitled to payment; and, in the absence of such agreement, the responsible insolvency practitioner may serve notice in writing requiring that person to commence detailed assessment proceedings² in the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, in any court having jurisdiction to wind up the company³.

If a liquidation or creditors' committee established in insolvency proceedings (except administrative receivership) resolves that the amount of any such costs, charges or expenses should be decided by detailed assessment, the insolvency practitioner must require detailed assessment⁴.

Where the amount of the costs, charges or expenses of any person employed by an insolvency practitioner in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the court, this does not preclude the insolvency practitioner from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, when detailed assessment is made, prove to have been overpaid⁵.

In any proceedings before the court, including proceedings on a petition, the court may order costs to be decided by detailed assessment⁶.

Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis⁷.

Where an enforcement officer or other officer⁸ is required to deliver up goods or money⁹ or has deducted costs from the proceeds of an execution or money paid to him¹⁰, the responsible insolvency practitioner may require in writing that the officer's bill of costs be decided by detailed assessment¹¹.

1 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

2 Ie in accordance with CPR Pt 47 (see CIVIL PROCEDURE vol 12 (2009) PARA 1779 et seq).

3 See the Insolvency Rules 1986, SI 1986/1925, r 7.34(1) (rr 7.34, 7.36 substituted by SI 1999/1022). For the meaning of 'insolvency proceedings' see para 459 note 5 ante. As to courts with jurisdiction to wind up the company see para 438 et seq ante.

The Insolvency Rules 1986, SI 1986/1925, r 7.34 (as substituted) applies, with any necessary modifications, to winding-up proceedings commenced before 29 December 1986 (ie the date on which the Insolvency Rules 1986, SI 1986/1925, came into force): rr 0.1, 7.34(6) (r 7.34(6) as so substituted).

4 Ibid r 7.34(2) (as substituted: see note 3 supra).

5 Ibid r 7.34(3) (as substituted: see note 3 supra). Repayments must be made with interest payable at the rate of 8% per annum: r 7.34(3) (as so substituted); Judgments Act 1838 s 17 (amended by the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, arts 1, 2).

6 Insolvency Rules 1986, SI 1986/1925, r 7.34(4) (as substituted: see note 3 supra). The court may make an order for immediate assessment of costs where, in a clear abuse of process, a director has caused statutory demands to be issued against a company, necessitating the company to apply for an injunction to restrain presentation of a winding-up petition: *Re a Company (No 003689 of 1998)* (1998) Times, 7 October.

7 Insolvency Rules 1986, SI 1986/1925, r 7.34(5) (as substituted: see note 3 supra). As to the standard basis see CPR 44.4 (basis of assessment: see CIVIL PROCEDURE vol 12 (2009) PARA 1747) and CPR 44.5 (factors to be taken into account in deciding the amount of costs: see CIVIL PROCEDURE vol 12 (2009) PARA 1748).

8 The Insolvency Rules 1986, SI 1986/1925, r 7.36 (as substituted) refers to 'a sheriff' for these purposes but, by virtue of the amendments made to the Insolvency Act 1986 s 184 by the Courts Act 2003 (see para 884 ante), this should be read as a reference to an enforcement or other officer. 'Enforcement officer' means an individual who is authorised to act under the Courts Act 2003: Insolvency Act 1986 s 184(6) (amended by the Courts Act 2003 s 109(1), Sch 8 para 296(1), (4)).

9 le under the Insolvency Act 1986 s 184(2) (as amended) (see para 884 ante).

10 le under ibid s 184(3) (as amended) (see para 885 ante).

11 See the Insolvency Rules 1986, SI 1986/1925, r 7.36(1) (as substituted: see note 3 supra). See also para 886 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1097 Requirement to decide costs by detailed assessment

TEXT AND NOTES 1-7--SI 1986/1925 r 7.34 substituted by r 7.34A: SI 2010/686.

NOTE 8--The reference to a sheriff is now to an enforcement officer: SI 1986/1925 r 7.36 (amended by SI 2005/527).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1098. Procedure where detailed assessment required.

1098. Procedure where detailed assessment required.

Before making a detailed assessment¹ of the costs of any person employed in insolvency proceedings² by a responsible insolvency practitioner³, the costs officer must require a certificate of employment, which must be indorsed on the bill and signed by the insolvency practitioner⁴. The certificate must include the name and address of the person employed⁵, details of the functions to be carried out under the employment⁶, and a note of any special terms of remuneration which have been agreed⁷.

Every person whose costs in insolvency proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the insolvency practitioner, commence detailed assessment proceedings⁸. If that person does not commence such proceedings within three months of this requirement being made or within such further time as the court, on application, may permit, the insolvency practitioner may deal with the company's assets without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings⁹.

Where costs have been incurred in insolvency proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be taxed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court¹⁰.

1 See para 1097 ante; and CIVIL PROCEDURE vol 12 (2009) PARA 1747 et seq.

2 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

3 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 7.35(1) (r 7.35 substituted by SI 1999/1022).

5 Insolvency Rules 1986, SI 1986/1925, r 7.35(2)(a) (as substituted: see note 4 supra).

6 Ibid r 7.35(2)(b) (as substituted: see note 4 supra).

7 Ibid r 7.35(2)(c) (as substituted: see note 4 supra).

8 Ibid r 7.35(3) (as substituted: see note 4 supra). As to detailed assessment proceedings see CPR Pt 47; and CIVIL PROCEDURE vol 12 (2009) PARA 1747 et seq.

9 Insolvency Rules 1986, SI 1986/1925, r 7.35(4) (as substituted: see note 4 supra), rr 13.1, 13.8(a). As to the making of applications see para 1055 et seq ante. Where in any such case such a claim lies additionally against an insolvency practitioner in his personal capacity, that claim is also forfeited by such failure to commence proceedings: r 7.35(5) (as so substituted).

10 Ibid r 7.35(6) (as substituted: see note 4 supra). As to the power to transfer see para 899 ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1099. Petitions presented by companies.

1099. Petitions presented by companies.

In any case where a petition is presented by a company against itself, any solicitor¹ acting for the company must in his bill of costs give credit for any sum or security received from the company as a deposit on account of the costs and expenses to be incurred in respect of the filing and prosecution of the petition; and the deposit must be noted by the costs officer on the final costs certificate².

Where a petition is presented by a person other than the company to whom the petition relates and, before it is heard, the company presents a petition for the same order, and that order is made, then, unless the court considers that the company's assets have benefited by the company's conduct, or that there are otherwise special circumstances justifying the allowance of costs, no costs may be allowed to the company or its solicitor out of the company's assets³.

¹ For these purposes, the reference to a solicitor includes a reference to a body corporate recognised by the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 4(a), Sch 1.

² Insolvency Rules 1986, SI 1986/1925, r 7.37(1) (r 7.37 substituted by SI 1999/1022).

³ Insolvency Rules 1986, SI 1986/1925, r 7.37(2), (3) (as substituted: see note 2 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1099 Petitions presented by companies

TEXT AND NOTES--SI 1986/1925 r 7.37 substituted by r 7.37A: SI 2010/686.

NOTE 1--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 3, 5 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1100. Costs paid otherwise than out of the company's assets.

1100. Costs paid otherwise than out of the company's assets.

Where the amount of costs is decided by detailed assessment¹ under an order of the court directing that the costs are to be paid otherwise than out of the company's assets, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid².

1 See para 1097 ante; and CIVIL PROCEDURE vol 12 (2009) PARA 1747 et seq.

2 Insolvency Rules 1986, SI 1986/1925, rr 7.38, 13.1, 13.8(a) (r 7.38 substituted by SI 1999/1022).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1101. Award of costs against official receiver or responsible insolvency practitioner.

1101. Award of costs against official receiver or responsible insolvency practitioner.

Without prejudice to any provision of the Insolvency Act 1986 or the Insolvency Rules 1986¹ by virtue of which the official receiver is not in any event to be liable for costs and expenses², where the official receiver or a responsible insolvency practitioner³ is made a party to any proceedings on the application of another party to the proceedings, he is not personally liable for costs, unless the court otherwise directs⁴.

1 le the Insolvency Rules 1986, SI 1986/1925 (as amended).

2 See para 550 ante. As to the official receiver see para 503 et seq ante.

3 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 7.39 (substituted by SI 1999/1022). In *Re Mordant (a bankrupt)* [1995] 2 BCLC 647, sub nom *Re Mordant, Mordant v Halls (Trustee in Bankruptcy)* [1995] BCC 209, it was held that the Insolvency Rules 1986, SI 1986/1925, r 7.39 provided the starting point in respect of costs awards against insolvency practitioners and that there is thus no personal liability unless there is reason to provide otherwise.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1102. Late application for costs.

1102. Late application for costs.

Where a party to, or person affected by, any proceedings in an insolvency applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and that application is not made at the time of the proceedings, the person concerned must serve a sealed copy of his application on the responsible insolvency practitioner¹, and, in a winding up by the court, on the official receiver².

The insolvency practitioner and, where appropriate, the official receiver may appear on the application³.

No costs of or incidental to the application may be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings⁴.

1 For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.40(1), (2) (r 7.40 substituted by SI 1999/1022). As to the official receiver see para 503 et seq ante. As to the making of applications see para 1055 et seq ante.

3 Insolvency Rules 1986, SI 1986/1925, r 7.40(3) (as substituted: see note 2 supra).

4 Ibid r 7.40(4) (as substituted: see note 2 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1102 Late application for costs

TEXT AND NOTES 1-3--SI 1986/1925 r 7.40(1)-(3) substituted for r 7.40(1)-(3A): SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1103. Costs and expenses of witnesses.

1103. Costs and expenses of witnesses.

Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court may be made to an officer¹ of the insolvent company to which the proceedings relate². A person presenting any petition in insolvency proceedings³ is not to be regarded as a witness on the hearing of the petition; but the costs officer may allow his expenses of travelling and subsistence⁴.

1 For the meaning of 'officer' see para 690 ante.

2 Insolvency Rules 1986, SI 1986/1925, r 7.41(1) (r 7.41 substituted by SI 1999/1022).

3 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

4 Insolvency Rules 1986, SI 1986/1925, r 7.41(2) (as substituted: see note 2 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1103 Costs and expenses of witnesses

TEXT AND NOTES--SI 1986/1925 r 7.41 amended: SI 2009/642.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(vii) Costs and Detailed Assessment/1104. Final costs certificate.

1104. Final costs certificate.

A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court¹. Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, he may issue a duplicate².

1 Insolvency Rules 1986 SI 1986/1925 r 7.42(1) (r 7.42 substituted by SI 1999/1022).

2 Insolvency Rules 1986, SI 1986/1925, r 7.42(2) (as substituted: see note 1 supra).

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(viii) Persons Incapable of Managing their Affairs/1105. Persons incapable of managing their affairs.

(viii) Persons Incapable of Managing their Affairs

1105. Persons incapable of managing their affairs.

Where in insolvency proceedings¹ it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either by reason of mental disorder², or due to physical affliction or disability (the 'incapacitated person'³), the court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person⁴. The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity⁵.

The court may make the appointment either of its own motion or on application by:

- 1379 (1) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person⁶;
- 1380 (2) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application⁷;
- 1381 (3) the official receiver⁸;
- 1382 (4) the person who, in relation to the proceedings, is the responsible insolvency practitioner⁹.

Such an application may be made without notice; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given¹⁰. The application must be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person, unless the application is made by the official receiver, in which case, a report made by him is sufficient¹¹.

Any notice served on, or sent to, a person appointed to act for the incapacitated person¹² has the same effect as if it had been served on, or given to, the incapacitated person⁹.

1 For the meaning of 'insolvency proceedings' see para 459 note 5 ante.

2 Ie within the meaning of the Mental Health Act 1983: see MENTAL HEALTH.

3 Insolvency Rules 1986, SI 1986/1925, r 7.43(2).

4 Ibid rr 7.43(1), 7.44(1). As to the prescribed form of order appointing a person to act for an incapacitated person see rr 7.44, 12.7, Sch 4 Form 7.19.

5 Ibid r 7.44(2).

6 Ibid r 7.44(3)(a). For the meaning of 'United Kingdom' see para 12 note 2 ante.

7 Ibid r 7.44(3)(b).

8 Ibid r 7.44(3)(c). As to the official receiver see para 503 et seq ante.

- 9 Ibid r 7.44(3)(d). For the meaning of 'responsible insolvency practitioner' see para 551 note 8 ante.
- 10 Ibid r 7.44(4). As to the making of applications see para 1055 et seq ante.
- 11 Ibid r 7.45(1), (2). As to the use of reports see also para 1080 ante.
- 12 Ie under ibid r 7.44 (see the text and notes 1-10 supra).
- 13 Ibid r 7.46. As to service generally see para 1087 et seq ante.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1105 Persons incapable of managing their affairs

TEXT AND NOTES--SI 1986/1925 r 7.45 substituted by r 7.45A, Sch 4 Form 7.19 revoked: SI 2010/686.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/10. PRACTICE AND PROCEDURE IN INSOLVENCY PROCEEDINGS/(4) MISCELLANEOUS PRACTICE AND PROCEDURE/(ix) Fees/1106. Fees orders.

(ix) Fees

1106. Fees orders.

In the Supreme Court, certain fees are prescribed by Supreme Court Fees Order, which extends to fees in insolvency proceedings before the High Court¹. In the county courts certain fees are prescribed by the County Court Fees Order². Fees orders³ have been made under statutory power conferred on the Lord Chancellor⁴ to direct, with the sanction of the Treasury⁵, that fees be paid in respect of company insolvency proceedings under the Insolvency Act 1986⁶ and in respect of the performance by the official receiver or the Secretary of State⁷ of functions under these provisions, and under the power conferred on the Treasury to direct by whom and in what manner the fees are to be collected and accounted for⁸. The Lord Chancellor may also, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for such fees⁹. An order made under these powers may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, or, as the case may be, the Treasury necessary or expedient¹⁰.

1 See the Supreme Court Fees Order 1999, SI 1999/687 (as amended).

2 See the County Court Fees Order 1999, SI 1999/689 (as amended).

3 See the Insolvency Proceedings (Fees) Order 2004, SI 2004/593. This replaces the Insolvency Fees Order 1986, SI 1986/2030 (as amended), which continues to have effect to a limited extent in relation to any case where a winding-up order was made under the Insolvency Act 1986 before 1 April 2004: Insolvency Proceedings (Fees) Order 2004, SI 2994/593, Sch 1.

4 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

5 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

6 I.e. the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended). References in s 414(1) to Pts I-VII (as amended) are to be read as including the Companies Act 1985 so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies: Insolvency Act 1986 s 414(8).

7 As to the official receiver see para 503 et seq ante. As to the Secretary of State see para 11 note 10 ante.

8 Insolvency Act 1986 s 414(1)-(3). Nothing in s 414 prejudices any power to make rules of court: s 414(9).

9 Ibid s 414(4).

10 Ibid s 414(5). An order under s 414 must be made by statutory instrument and, after being made, must be laid before each House of Parliament: s 414(6). Fees payable by virtue of s 414 must be paid into the Consolidated Fund: s 414(7). All money received by the Secretary of State in respect of proceedings under the Insolvency Act 1986 must be paid into the Insolvency Services Account: see s 403(1). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the Insolvency Services Account and the Insolvency Services Investment Account see ss 403, 404; para 554 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 26-30.

UPDATE

1025-1106 Practice and Procedure in Insolvency Proceedings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1106 Fees orders

NOTES 1, 2--SI 1999/687, SI 1999/689 replaced: Civil Proceedings Fees Order 2008, SI 2008/1053 (see CIVIL PROCEDURE vol 11 (2009) PARA 87).

NOTE 3--SI 2004/593 amended: SI 2005/544, SI 2006/561, SI 2007/521, SI 2008/714, SI 2009/645.

TEXT AND NOTES 6-10--The Lord Chancellor's functions under the 1986 Act s 414 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 6--1986 Act s 414(8) amended: SI 2007/2194. 1986 Act s 414(8A), (8B) (application to bank insolvency and bank administration) and s 414(8C) (application to building society insolvency and building society special administration) added: Banking Act 2009 ss 126, 161; SI 2009/805.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(1) IN GENERAL/1107. Disqualification order.

11. DISQUALIFICATION ORDERS AND UNDERTAKINGS

(1) IN GENERAL

1107. Disqualification order.

A disqualification order is an order made¹ against a person that for a period specified in the order² he must not be a director³ of a company⁴, act as receiver of a company's property⁵ or in any way, whether directly or indirectly, be concerned or take part in⁶ the promotion, formation or management⁷ of a company unless (in each case) he has the leave of the court⁸; nor may he act as an insolvency practitioner⁹.

Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking¹⁰, the periods specified in those orders or, as the case may be, in the order and the undertaking run concurrently¹¹.

A disqualification order may be made on grounds which are or include matters other than criminal convictions notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters¹².

The Company Directors Disqualification Act 1986 applies to building societies¹³, to incorporated friendly societies¹⁴, and to NHS foundation trusts¹⁵, as it applies to companies.

A person who is subject to a disqualification order or disqualification undertaking is disqualified for being a charity trustee or trustee for a charity, unless leave has been granted by the court¹⁶.

Where an insolvent partnership is wound up as an unregistered company, certain of the provisions of the Company Directors Disqualification Act 1986 apply, subject to modifications¹⁷.

1 In the circumstances specified in the Company Directors Disqualification Act 1986, a court may, and under s 6 (see para 1121 post) and s 9A (as added) (see para 1114 post) must, make a disqualification order: s 1(1) (amended by the Enterprise Act 2002 s 204(1), (3)). For the meaning of 'the court' see para 4 ante. See also notes 13-16 infra. The Company Directors Disqualification Act 1986 is applied with modifications to limited liability partnerships by the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 4, Sch 2: see para 1310 post. For the meaning of 'limited liability partnership' see para 71 note 3 ante. As to limited liability partnerships generally see PARTNERSHIP vol 49 (2008) PARA 234 et seq.

2 Company Directors Disqualification Act 1986 s 1(1) (amended by the Insolvency Act 2000 s 5(1)). In each provision of the Company Directors Disqualification Act 1986 which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum, and in s 6 (see para 1121 post) the minimum, period of disqualification which may or (as the case may be) must be imposed by means of the order; and, unless the court otherwise orders, the period of disqualification so imposed begins at the end of the period of 21 days beginning with the date of the order: s 1(2) (amended by the Insolvency Act 2000 s 5(2)). As to the period of disqualification see para 1138 post.

3 For these purposes, unless the context otherwise requires, 'director' includes any person occupying the position of director, by whatever name called: Company Directors Disqualification Act 1986 s 22(1), (4) (amended by the Insolvency Act 2000 ss 8, 15(1), Sch 4 Pt I paras 1, 15(1), (3), Sch 5). See also notes 13-16 infra. The word 'director' is capable of including and, given the protective purpose of disqualification, does include de facto directors: *Re Lo-Line Electric Motors Ltd* [1988] Ch 477, [1988] 2 All ER 692 (decided under the Companies Act 1985 s 300 (repealed)). A de facto director is a person who assumes to act as a director; he is held out as a director by the company, and claims and purports to be a director, although never actually or validly appointed as such: *Re Hydrodam (Corby) Ltd* [1994] 2 BCLC 180 at 183 per Millett J. To establish that a person was a de facto director of a company, it is necessary to plead and prove that he undertook functions in

relation to the company which could properly be discharged only by a director: *Re Hydrodam (Corby) Ltd* supra at 183 per Millett J. See also *Re Moorgate Metals Ltd* [1995] 1 BCLC 503; *Re Richborough Furniture Ltd* [1996] 1 BCLC 507, [1996] BCC 155; *Re Sykes (Butchers) Ltd* [1998] 1 BCLC 110; *Secretary of State for Trade and Industry v Tjolle* [1998] 1 BCLC 333 at 343-344 per Jacob J ('sales and marketing director' or 'deputy managing director' not a de facto director); *Re Red Label Fashions Ltd* [1999] BCC 308; *Re Kaytech International plc, Secretary of State for Trade and Industry v Kaczer* [1999] 2 BCLC 351, CA (de facto director rather than 'consultant' or 'company secretary'); *Secretary of State for Trade and Industry v Becker* [2002] EWHC 2200 (Ch), [2003] 1 BCLC 555 (one possible event at the end of a company's history was insufficient to establish that an individual had been a de facto or shadow director).

4 For these purposes, unless the context otherwise requires, 'company' includes any company which may be wound up under the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (see para 1147 et seq post): Company Directors Disqualification Act 1986 s 22(1), (2)(b). See also *Re Seagull Manufacturing Co Ltd (in liquidation) (No 2)* [1994] Ch 91, [1994] 2 All ER 767; and notes 13-16 infra. Any reference in the Company Directors Disqualification Act 1986 to provisions, or a particular provision, of the Companies Acts or the Insolvency Act 1986 includes the corresponding provisions or provision of the former Companies Acts including the Companies Act 1985, or, as the case may be, the Insolvency Act 1985; and any expression for whose interpretation provision is made by the Companies Act 1985 Pt XXVI (ss 735-744) (as amended) and not by the Company Directors Disqualification Act 1986 s 22(1), (3)-(8) is to be construed in accordance with that provision: s 22(8), (9). For the meanings of 'the Companies Acts' and 'the former Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

The Company Directors Disqualification Act 1986 s 1A (as added) (see para 1108 post), ss 6-10 (see paras 1118, 1121-1125, 1127-1128 post), ss 13-15 (see paras 1142-1144 post), s 19(c) (see paras 1113, 1121 post), s 20 (see para 1145 post), Sch 1 (see paras 1122-1123 post) (and ss 1, 17 as they apply for the purposes of those provisions) are deemed included in the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended) for the purposes of s 411 (power to make insolvency rules: see para 1041 ante), s 414 (as amended) (fees orders: see para 1106 ante), s 420 (orders extending provisions about insolvent companies to insolvent partnerships: see para 1166 post), and s 422 (as amended) (modification of such provisions in their application to authorised institutions: see para 552 ante); s 21(2) (amended by the Companies Act 1989 s 212, Sch 24; and the Insolvency Act 2000 Sch 4 Pt I paras 1, 14(1), (2)).

5 For these purposes, any references to acting as receiver includes acting as manager or as both receiver and manager, but does not include acting as administrative receiver; and 'receivership' is to be read accordingly: Company Directors Disqualification Act 1986 s 22(10) (added by the Insolvency Act 2000 s 5(3)). As to the construction of references to receivers and managers generally see COMPANIES vol 15 (2009) PARA 1336. As to administrative receivers generally see para 380 et seq ante.

6 This wording is intended to prevent persons, against whom an order of disqualification has been made, from taking part in the management of company affairs generally: *R v Campbell* [1984] BCLC 83, CA (decided under the Companies Act 1948 s 188(1) (now repealed) where the meaning of 'be concerned or take part in' was considered, and the conclusion drawn that 'be concerned in' should not be narrowly construed to mean 'take part in').

7 As to the meaning of 'management' see *Re Clasper Group Services Ltd* [1989] BCLC 143, 4 BCC 673 (decided under the Insolvency Act 1986 s 212(1)(c): see para 688 ante); *Comr of Corporate Affairs v Bracht* (1989) 7 ACLC 40 at 47-48 per Ormiston J; *Re Market Wizard Systems (UK) Ltd* [1998] 2 BCLC 282 at 299-300 per Carnwath J.

8 Company Directors Disqualification Act 1986 s 1(1)(a) (amended by the Insolvency Act 2000 s 5(1)). As to obtaining the court's leave to act despite being disqualified see para 1139 post. The Company Directors Disqualification Act 1986 s 1(1) (as amended) envisages one disqualification with a number of different consequences and not several different categories of disqualification: *R v Cole* [1998] 2 BCLC 234, CA. An order disqualifying a person from acting as a director cannot be limited to a disqualification from holding directorships in public companies: *R v Ward* [2001] EWCA Crim 1648, [2002] BCC 953.

9 Company Directors Disqualification Act 1986 s 1(1)(b) (amended by the Insolvency Act 2000 s 5(1)). References to acting as an insolvency practitioner are to be read in accordance with the Insolvency Act 1986 s 388 (see para 8 ante): Company Directors Disqualification Act 1986 s 22(3) (amended by the Insolvency Act 2000 Sch 4 Pt I paras 1, 15(1), (2)). As to persons subject to a disqualification order under the Companies (Northern Ireland) Order 1989, SI 1989/2404, see the Company Directors Disqualification Act 1986 s 12A (added by the Insolvency Act 2000 s 7(1)). As to persons subject to a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, see the Company Directors Disqualification Act 1986 s 12B (added by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(1), (2)). As to the company law of Northern Ireland generally see COMPANIES.

10 As to disqualification undertakings see para 1108 post.

11 Company Directors Disqualification Act 1986 s 1(3) (amended by the Insolvency Act 2000 Sch 4 Pt I paras 1, 2).

12 Company Directors Disqualification Act 1986 s 1(4). It is wrong in principle to make a compensation order against a person for fraudulent trading at the same time as making a disqualification order: *R v Holmes* [1991] BCC 394, CA. As to the correct approach where criminal and civil disqualification orders potentially overlap see *Secretary of State for Trade and Industry v Rayna* [2001] 2 BCLC 48 at 57-60 per Anthony Mann QC; affd [2004] BCC 65, CA. The Company Directors Disqualification Act 1986 s 20 (as amended) (see para 1145 post) provides an additional and substantial layer of protection in almost all cases in which there are disqualification proceedings and criminal proceedings arising out of the same circumstances: *Secretary of State for Trade and Industry v Crane* [2001] 2 BCLC 222 at 228 per Ferris J.

13 Company Directors Disqualification Act 1986 s 22A(1) (s 22A added by the Companies Act 1989 s 211(3)). References in the Company Directors Disqualification Act 1986 to a company, or to a director or an officer of a company include, respectively, references to a building society within the meaning of the Building Societies Act 1986 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1856) or to a director or officer, within the meaning of the Building Societies Act 1986 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1944), of a building society: Company Directors Disqualification Act 1986 s 22A(2) (as so added). In relation to a building society, the definition of 'shadow director' in s 22(5) applies with the substitution of 'building society' for 'company': s 22A(3) (as so added). In the application of Sch 1 (as amended) (see para 1122 post) to the directors of a building society, references to provisions of the Insolvency Act 1986 or the Companies Act 1985 include references to the corresponding provisions of the Building Societies Act 1986: Company Directors Disqualification Act 1986 s 22A(4) (as so added).

'Shadow director', in relation to a company, means a person in accordance with whose directions or instructions the directors of a company are accustomed to act, but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity: s 22(1), (5). As to the use of the words 'direction' and 'instruction' in this definition see *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340 at 354, [2000] 2 All ER 365 at 376 per Morritt LJ; *Secretary of State for Trade and Industry v Becker* [2002] EWHC 2200 (Ch), [2003] 1 BCLC 555 (proof required of a pattern of conduct in which a de jure director of a company was accustomed to act on the instructions or directions of the alleged shadow director). In other contexts, it has been held that a company's bank might be a shadow director: *Re a Company (No 005009 of 1987)*, ex p *Copp* [1989] BCLC 13, 4 BCC 424. See also *Re Tasbian Ltd (No 3)* [1993] BCLC 297, [1992] BCC 358, CA (outside investor). As to the distinction between de facto directors and shadow directors, which, it appears, are mutually exclusive classes, see *Re Hydroadam (Corby) Ltd* [1994] 2 BCLC 180, [1994] BCC 161. See also *Secretary of State for Trade and Industry v Laing* [1996] 2 BCLC 324 at 346 per Evans-Lombe J; *Re Kaytech International plc*, *Secretary of State for Trade and Industry v Kaczer* [1999] 2 BCLC 351 at 424, CA, per Robert Walker LJ.

14 Company Directors Disqualification Act 1986 s 22B(1) (s 22B added by the Friendly Societies Act 1992 s 120(1), Sch 21 Pt I para 8). References in the Company Directors Disqualification Act 1986 to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2082) or to a member of the committee of management or an officer, within the meaning of that Act (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2115), of an incorporated friendly society: Company Directors Disqualification Act 1986 s 22B(2) (as so added). In relation to an incorporated friendly society, every reference to a shadow director must be omitted: s 22B(3) (as so added). In the application of Sch 1 (as amended) (see para 1122 post) to the members of the committee of management of an incorporated friendly society, references to provisions of the Insolvency Act 1986 or the Companies Act 1985 include references to the corresponding provisions of the Friendly Societies Act 1992: Company Directors Disqualification Act 1986 s 22B(4) (as so added).

15 Ibid s 22C(1) (s 22C added by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 67, 68). References in the Company Directors Disqualification Act 1986 to a company, or to a director or officer of a company, include, respectively, references to an NHS foundation trust or to a director or officer of the trust; but references to shadow directors are omitted: s 22C(2) (as so added). In the application of Sch 1 (as amended) to the directors of an NHS foundation trust, references to the provisions of the Insolvency Act 1986 or the Companies Act 1985 include references to the corresponding provisions of the Health and Social Care (Community Health and Standards) Act 2003 Pt I (ss 1-40) (NHS foundation trusts) (see HEALTH SERVICES vol 54 (2008) PARA 174): Company Directors Disqualification Act 1986 s 22C(3) (as so added).

16 See the Charities Act 1993 s 72(1)(f), (3)(a) (as amended); and CHARITIES vol 8 (2010) PARA 273.

17 See para 1166 post.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1107 Disqualification order

NOTE 1--SI 2001/1090 Sch 2 amended: SI 2007/2073, SI 2009/1804.

NOTE 4--'Company' means (1) a company registered under the Companies Act 2006 in Great Britain; or (2) a company that may be wound up under the Insolvency Act 1986 Pt V (ss 73-229): Company Directors Disqualification Act 1986 s 22(2) (substituted by SI 2009/1941). Any reference to provisions, or a particular provision, of the Companies Acts or the Insolvency Act 1986 includes the corresponding provisions or provision of corresponding earlier legislation: Company Directors Disqualification Act 1986 s 22(8) (substituted by SI 2009/1941). Company Directors Disqualification Act 1986 s 22(9) substituted: SI 2008/948. Company Directors Disqualification Act 1986 ss 21(2), 22(9) amended: SI 2009/1941.

NOTE 9--Company Directors Disqualification Act 1986 s 12A amended: SI 2009/1941.

TEXT AND NOTES 13-15--As to the application of the Company Directors Disqualification Act 1986 to open-ended investment companies, see the Company Directors Disqualification Act 1986 s 22D (added by SI 2009/1941); and COMPANIES vol 15 (2009) PARA 1578.

NOTE 13--Company Directors Disqualification Act 1986 s 22A(4) amended: SI 2008/948, SI 2009/1941. See also *Re Mea Corpn Ltd; Secretary of State for Trade and Industry v Aviss* [2006] EWHC 1846 (Ch), [2007] 1 BCLC 618.

NOTE 14--Company Directors Disqualification Act 1986 s 22B(4) amended: SI 2008/948, SI 2009/1941.

NOTE 15--Company Directors Disqualification Act 1986 s 22C(3) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 92, SI 2008/948, SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(1) IN GENERAL/1108. Disqualification undertakings.

1108. Disqualification undertakings.

A disqualification undertaking is an undertaking accepted¹ by the Secretary of State² made by any person that, for a period specified³ in the undertaking, the person⁴ will not be a director⁵ of a company⁶, act as receiver of a company's property⁷ or in any way, whether directly or indirectly, be concerned or take part in⁸ the promotion, formation or management⁹ of a company unless, in each case, he has the leave of a court¹⁰; nor will he act as an insolvency practitioner¹¹.

Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order¹² is accepted, the periods specified in those undertakings or, as the case may be, the undertaking and the order will run concurrently¹³.

In determining whether to accept a disqualification undertaking by any person, the Secretary of State may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters¹⁴; and he must, as respects the person's conduct as a director of any company concerned, have regard to the matters for determining unfitness of directors¹⁵.

1 Is accepted in the circumstances specified in the Company Directors Disqualification Act 1986 ss 7, 8 (see paras 1113, 1125-1128 post). As to disqualification undertakings in Northern Ireland see the Company Directors Disqualification Act 1986 s 12B (added by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(1), (2)); and the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150.

2 As to the Secretary of State see para 11 note 10 ante.

3 The maximum period which may be specified in a disqualification undertaking is 15 years, and the minimum period which may be specified in a disqualification undertaking under the Company Directors Disqualification Act 1986 s 7 is two years: s 1A(2) (s 1A added by the Insolvency Act 2000 s 6(1), (2)). The court may, on the application of a person who is subject to a disqualification undertaking, reduce the period for which the undertaking is to be in force, or provide for it to cease to be in force: Company Directors Disqualification Act 1986 s 8A(1) (s 8A added by the Insolvency Act 2000 s 6(1), (5)). On the hearing of such an application, the Secretary of State must appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses: Company Directors Disqualification Act 1986 s 8A(2) (as so added). Section 8A(2) (as added) does not apply to an application in the case of an undertaking given under s 9B (as added) (see para 1115 post), and in such a case on the hearing of the application whichever of the Office of Fair Trading (see COMPETITION vol 18 (2009) PARA 6 et seq) or a specified regulator (within the meaning of s 9E (as added): see para 1114 post) accepted the undertaking must appear and call the attention of the court to any matters which appear to it or him (as the case may be) to be relevant, and may give evidence or call witnesses: s 8A(2A) (s 8A as so added; and s 8A(2A) added by the Enterprise Act 2002 s 204(1), (4)). For these purposes, 'court': (1) in the case of an undertaking given under the Company Directors Disqualification Act 1986 s 9B (as added), means the High Court; and (2) in any other case, has the same meaning as in s 7(2) (see para 1121 note 1 post) or s 8 (see para 1113 note 7 post), as the case may be: s 8A(3) (as so added; and substituted by the Enterprise Act 2002 s 204(1), (5)). For the meaning of 'the court' generally see para 4 ante.

4 Company Directors Disqualification Act 1986 s 1A(1) (as added: see note 3 supra).

5 As to the meaning of 'director' see para 1107 note 3 ante.

6 As to the meaning of 'company' for these purposes see para 1107 note 4 ante.

7 As to references to acting as receiver see para 1107 note 5 ante.

8 See para 1107 note 6 ante.

- 9 See para 1107 note 7 ante.
- 10 Company Directors Disqualification Act 1986 s 1A(1)(a) (as added: see note 3 supra).
- 11 Ibid s 1A(1)(b) (as added: see note 3 supra). For the meaning of 'act as an insolvency practitioner' see para 1107 note 9 ante.
- 12 As to disqualification orders see para 1107 ante.
- 13 Company Directors Disqualification Act 1986 s 1A(3) (as added: see note 3 supra).
- 14 Ibid s 1A(4) (as added: see note 3 supra).
- 15 Ibid s 9(1A) (added by the Insolvency Act 2000 s 6(1), (6)). As to determining the unfitness of directors see para 1122 post.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1109. Disqualification on conviction of indictable offence.

(2) GROUNDS FOR DISQUALIFICATION

1109. Disqualification on conviction of indictable offence.

The court¹ may make a disqualification order² against a person where he is convicted of an indictable offence³, whether on indictment or summarily, in connection with the promotion, formation, management, liquidation or striking off of a company⁴, with the receivership of a company's property⁵ or with his being an administrative receiver⁶ of a company⁷.

The maximum period of disqualification which may be imposed under these provisions is, where the disqualification order is made by a court of summary jurisdiction, five years, and in any other case, 15 years⁸.

1 For these purposes, 'the court' means: (1) any court having jurisdiction to wind up the company in relation to which the offence was committed; or (2) the court by or before which the person is convicted of the offence; or (3) in the case of a summary conviction in England and Wales, any other magistrates' court acting for the same petty sessions area: Company Directors Disqualification Act 1986 s 2(2). As from a day to be appointed, head (3) supra is amended so as to refer to any other magistrates' court acting in the same local justice area: see s 2(2) (prospectively amended by the Courts Act 2003 s 109(1), Sch 8 para 300(a)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'the court' generally see para 4 ante.

2 As to disqualification orders see para 1107 ante.

3 For these purposes, the definition of 'indictable offence' in the Interpretation Act 1978 s 5, Sch 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1102) applies: Company Directors Disqualification Act 1986 s 2(2). See also *Re Samuel Chandler Ltd, Secretary of State for Trade and Industry v Nimley* [2002] All ER (D) 283 (Jan) (an application for a disqualification order may be made under the Company Directors Disqualification Act 1986 s 2 (as amended) even though the criminal court has refused to make such an order). As to the situation where a director is subject to both criminal and civil sanctions see also para 1128 note 2 post.

4 See *R v Georgiou* (1988) 4 BCC 322, CA; *R v Goodman* [1993] 2 All ER 789, [1994] 1 BCLC 349, CA (defendant convicted of insider dealing; the correct test to be applied was held to be whether the offence had some relevant factual connection with the management of the company). For the meaning of 'company' for these purposes see para 1107 note 4 ante.

5 As to references to acting as receiver see para 1107 note 5 ante.

6 As to administrative receivers generally see para 380 et seq ante.

7 Company Directors Disqualification Act 1986 s 2(1) (amended by the Deregulation and Contracting Out Act 1994 s 39, Sch 11 para 6; and the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 3).

8 Company Directors Disqualification Act 1986 s 2(3). Section 2 (as amended) does not apply in relation to anything done before 15 June 1982 by a person in his capacity as liquidator of a company or as receiver or manager of a company's property: s 19(a), Sch 2 para 1. Subject to this qualification, s 2 (as amended) applies in a case where a person is convicted on indictment of an offence which he committed (and, in the case of a continuing offence, had ceased to commit) before 15 June 1982; but in such a case a disqualification order under s 2 (as amended) cannot be made for a period in excess of five years: Sch 2 para 2(a). Section 2 (as amended) does not apply in a case where a person was convicted summarily in England and Wales if he had consented so to be tried before that date: Sch 2 para 2(b)(i). The date mentioned above (ie 15 June 1982) is the date when the statutory predecessor of these provisions, the Companies Act 1981 s 93 (now repealed), came into force: see s 93(1), (1C) (repealed); and the Companies Act 1981 (Commencement No 4) Order 1982, SI 1982/672.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

1109 Disqualification on conviction of indictable offence

NOTE 1--Day appointed is 1 April 2005: SI 2005/910.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1110. Disqualification for persistent breaches of companies legislation.

1110. Disqualification for persistent breaches of companies legislation.

The court¹ may make a disqualification order² against a person where it appears to it that he has been persistently in default in relation to provisions of the companies legislation³ requiring any return, account or other document to be filed with, delivered or sent to the registrar of companies, or notice of any matter to be given to the registrar of companies⁴.

On an application⁵ to the court for such an order to be made, the fact that a person has been persistently in default in relation to such provisions as are mentioned above may, without prejudice to its proof in any other manner, be conclusively proved by showing that in the five years ending with the date of the application he has been adjudged guilty⁶, whether or not on the same occasion, of three or more defaults in relation to those provisions⁷.

The maximum period of disqualification which may be imposed under these provisions is five years⁸.

1 For these purposes, 'the court' means any court having jurisdiction to wind up any of the companies in relation to which the offence or other default has been or is alleged to have been committed: Company Directors Disqualification Act 1986 s 3(4). For the meaning of 'the court' generally see para 4 ante.

2 As to disqualification orders see para 1107 ante.

3 For these purposes, 'the companies legislation' means the Companies Act 1985, the Companies Consolidation (Consequential Provisions) Act 1985, the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended) and ss 411, 413, 414, 416, 417 (ss 411, 414 as amended): Company Directors Disqualification Act 1986 s 22(1), (7); Companies Act 1985 s 744.

4 Company Directors Disqualification Act 1986 s 3(1). For these purposes, no account is to be taken of any offence which was committed, or any default order which was made, before 1 June 1977 (ie the date on which the Companies Act 1976 s 28 (now repealed) came into force): Company Directors Disqualification Act 1986 s 19(b), Sch 2 para 5. As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

5 See further para 1130 et seq post.

6 A person is to be treated under the Company Directors Disqualification Act 1986 s 3(2) as being adjudged guilty of a default in relation to any provision of that legislation if:

78 (1) he is convicted, whether on indictment or summarily, of an offence consisting of a contravention of or failure to comply with that provision, whether on his own part or on the part of any company (s 3(3)(a)); or

79 (2) a default order is made against him under:

21. (a) the Companies Act 1985 s 242(4) (sic) (as substituted) (order requiring delivery of company accounts);

22

22. (b) s 245B (as added) (order requiring preparation of revised accounts);

23

23. (c) s 713 (as amended) (enforcement of company's duty to make returns;

24

24. (d) the Insolvency Act 1986 s 41 (enforcement of receiver's or manager's duty to make returns: see COMPANIES vol 15 (2009) PARA 1353);

25

25. (e) s 170 (enforcement of liquidator's duty to make returns: see para 570 ante),

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80 in respect of any such contravention of or failure to comply with that provision, whether on his own part or on the part of any company (Company Directors Disqualification Act 1986 s 3(3) (b) (amended by the Companies Act 1989 s 23, Sch 10 para 35(1), (2)(a), (b))).

Although the Act refers to the Companies Act 1985 s 242(4), it is submitted that head (a) supra should refer to s 242(3) (as substituted).

7 Company Directors Disqualification Act 1986 s 3(2). An order made under the Companies Act 1976 s 28 (repealed) has effect as if made under the Company Directors Disqualification Act 1986 s 3 (as amended); and an application made before 15 June 1982 (see para 1109 note 8 ante) for such an order is to be treated as an application for an order under s 3 (as amended): Sch 2 para 6. Under the Companies Act 1948 s 188 (repealed), it was not necessary to show that a person had been culpable, in the sense of evincing a deliberate disregard of the relevant provisions, in order to prove that he had been 'persistently in default'; but culpability could be taken into account in considering whether or not to disqualify and for how long: *Re Arctic Engineering Ltd (No 2)* [1986] 2 All ER 346, [1986] 1 WLR 686.

8 Company Directors Disqualification Act 1986 s 3(5).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1110 Disqualification for persistent breaches of companies legislation

NOTE 3--Company Directors Disqualification Act 1986 s 22(7) substituted: SI 2009/1941. In the Companies Directors Disqualification Act 1986 s 3, 'the companies legislation' means the Companies Acts and the Insolvency Act 1986 Pts I-VII: Company Directors Disqualification Act 1986 s 3(4A) (added by SI 2009/1941).

NOTE 6--Company Directors Disqualification Act 1986 s 3(3)(b) further amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1111. Disqualification for fraud etc in a winding up.

1111. Disqualification for fraud etc in a winding up.

The court¹ may make a disqualification order² against a person if, in the course of the winding up of a company³, it appears that he⁴:

- 1383 (1) has been guilty of an offence for which he is liable under the fraudulent trading provisions⁵, whether he has been convicted or not⁶; or
- 1384 (2) has otherwise been guilty, while an officer⁷ or liquidator of the company, receiver of the company's property⁸ or administrative receiver⁹ of the company, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or administrative receiver¹⁰.

The maximum period of disqualification which may be imposed under these provisions is 15 years¹¹.

1 For these purposes, 'the court' means any court having jurisdiction to wind up the company in relation to which the offence or other default has been or is alleged to have been committed: Company Directors Disqualification Act 1986 s 4(2). For the meaning of 'the court' generally see para 4 ante.

2 As to disqualification orders see para 1107 ante.

3 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

4 Company Directors Disqualification Act 1986 s 4(1).

5 Ie the Companies Act 1985 s 458 (see para 913 ante) or the corresponding provisions of the former Companies Acts: Company Directors Disqualification Act 1986 s 22(8). For the meaning of 'the former Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

6 Company Directors Disqualification Act 1986 s 4(1)(a). See *Re Denis Hilton Ltd* [2002] 1 BCLC 302 (a person could not complain of the fact that the civil proceedings followed in the train of criminal proceedings as the Company Directors Disqualification Act 1986 s 4 (as amended) specifically envisages those events; and a suggestion that the Secretary of State was somehow represented at the criminal proceedings and in substance a party, so that he was to be treated as having refrained from seeking or as having failed to obtain a disqualification order, is wholly unrealistic and fanciful). As to the situation where a director is subject to both criminal and civil sanctions see also para 1128 note 2 post.

7 For these purposes, 'officer' includes a shadow director: Company Directors Disqualification Act 1986 s 4(2). As to the meaning of 'shadow director' see para 1107 note 13 ante. In the Company Directors Disqualification Act 1986 generally, 'officer' has the meaning given by the Companies Act 1985 s 744 (see COMPANIES vol 14 (2009) PARA 607): Company Directors Disqualification Act 1986 s 22(6). See also para 1107 notes 13-16 ante.

8 Ibid s 4(1)(b) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 4). The Company Directors Disqualification Act 1986 s 4(1)(b) (as amended) does not, however, apply in relation to anything done before 15 June 1982 (see para 1109 note 8 ante) by a person in his capacity as liquidator of a company or as receiver or manager of a company's property: s 19(a), Sch 2 para 1. Subject to this qualification, s 4 (as amended) applies in relation to an offence committed or other thing done before 15 June 1982; but a disqualification order made on the grounds of such an offence or other thing done must not be made for a period in excess of five years: Sch 2 para 3.

9 As to references to acting as receiver see para 1107 note 5 ante.

10 As to administrative receivers generally see para 380 et seq ante.

11 Company Directors Disqualification Act 1986 s 4(3). See also note 8 supra.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1111 Disqualification for fraud etc in a winding up

NOTE 5--Company Directors Disqualification Act 1986 s 22(8) substituted: see PARA 1107.

NOTE 7--Definition of 'officer' substituted: SI 2009/1941 (see COMPANIES vol 15 (2009) PARA 1582 NOTE 7).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1112. Disqualification on summary conviction.

1112. Disqualification on summary conviction.

Where a person is convicted of a summary offence¹ (being for these purposes an offence of which a person is convicted, either on indictment or summarily, in consequence of a contravention of, or failure to comply with, any provision of the companies legislation² requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies³, whether the contravention or failure is on the person's own part or on the part of any company)⁴, the court by which he is convicted, or, in England or Wales, any other magistrates' court acting for the same petty sessions area⁵, may make a disqualification order⁶ against him⁷ if, during the five years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than three default orders⁸ and offences counting for the purposes of these provisions⁹.

The maximum period of disqualification which may be imposed under these provisions is five years¹⁰.

1 For these purposes, the definition of 'summary offence' in the Interpretation Act 1978 s 5, Sch 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1102) applies: Company Directors Disqualification Act 1986 s 5(4)(a).

2 For the meaning of 'the companies legislation' for these purposes see para 1110 note 3 ante.

3 As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

4 Company Directors Disqualification Act 1986 s 5(1). For the meaning of 'company' for these purposes see para 1107 note 4 ante.

5 As from a day to be appointed, the Company Directors Disqualification Act 1986 s 5(2) is amended so as to refer to any other magistrates' court acting in the same local justice area: s 5(2) (prospectively amended by the Courts Act 2003 s 109(1), Sch 8 para 300(b)). At the date at which this volume states the law no such day had been appointed.

6 As to disqualification orders see para 1107 ante.

7 Company Directors Disqualification Act 1986 s 5(2). See note 6 supra.

8 For these purposes, 'default order' means the same as in *ibid* s 3(3)(b) (see para 1110 note 6 head (2) ante): s 5(4)(b).

9 *Ibid* s 5(3). The offences counting for the purposes of these provisions may include that of which he is convicted as mentioned in s 5(2) (see the text and notes 1-8 supra) and any other offence of which he is convicted on the same occasion: s 5(3).

10 *Ibid* s 5(5). The powers of a court under s 5 (prospectively amended) are not exercisable in a case where a person is convicted of an offence which he committed, and, in the case of a continuing offence, had ceased to commit, before 15 June 1982 (see para 1109 note 8 ante): s 19(a), Sch 2 para 4. For the purposes of s 5 (prospectively amended), no account is to be taken of any offence which was committed, or any default order which was made, before 1 June 1977 (see para 1110 note 4 ante): s 19(b), Sch 2 para 5.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1112 Disqualification on summary conviction

NOTE 5--Day appointed is 1 April 2005: SI 2005/910.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1113. Application for disqualification order after investigation of company.

1113. Application for disqualification order after investigation of company.

If it appears to the Secretary of State¹ from investigative material² that it is expedient in the public interest that a disqualification order³ should be made against any person who is or has been a director⁴ or shadow director⁵ of a company⁶, he may apply to the court⁷ for such an order⁸. The court may make a disqualification order against a person where, on an application under these provisions, it is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company⁹.

However, where it appears to the Secretary of State from such material¹⁰ that, in the case of a person who has offered to give him a disqualification undertaking¹¹, the conduct of the person in relation to a company of which the person is or has been a director or shadow director makes him unfit to be concerned in the management of a company¹², and it is expedient in the public interest that he should accept the undertaking, instead of applying, or proceeding with an application, for a disqualification order, he may accept the undertaking¹³.

The maximum period of disqualification which may be imposed under these provisions is 15 years¹⁴.

1 As to the Secretary of State see para 11 note 10 ante.

2 For this purpose, 'investigative material' means: (1) a report made by inspectors under the Companies Act 1985 s 437, the Financial Services and Markets Act 2000 ss 167-169 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 449, 450) or s 284 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 448), or (where the company is an open-ended investment company within the meaning of the Financial Services and Markets Act 2000: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 603) under regulations made as a result of s 262(2)(k) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 621); and (2) information or documents obtained under the Companies Act 1985 s 447 or s 448 (see COMPANIES vol 15 (2009) PARA 1559), the Criminal Justice Act 1987 s 2 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1090), the Criminal Law (Consolidation) (Scotland) Act 1995 s 28, the Companies Act 1989 s 83 (see COMPANIES vol 15 (2009) PARA 1569) or the Financial Services and Markets Act 2000 s 165 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 447), ss 171-173 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 449) or s 175 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 453): Company Directors Disqualification Act 1986 s 8(1A) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 39).

3 As to disqualification orders see para 1107 ante.

4 As to the meaning of 'director' see para 1107 note 3 ante.

5 As to the meaning of 'shadow director' see para 1107 note 13 ante.

6 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

7 For these purposes, 'the court' means the High Court: Company Directors Disqualification Act 1986 s 8(3). As to the mode of application and the procedure see para 1129 et seq post. No application may be made in relation to a report made or information or documents obtained before 28 April 1986 (ie the date on which the provisions replaced by the Company Directors Disqualification Act 1986 s 8 (as amended) came into force: see the Insolvency Act 1985 s 235, Sch 9 Pt II para 3 (repealed); and the Insolvency Act 1985 (Commencement No 3) Order 1986, SI 1986/463): Company Directors Disqualification Act 1986 s 19(c), Sch 2 para 8.

8 Ibid s 8(1) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 39). See *Re Queen's Moat Houses plc, Secretary of State for Trade and Industry v Bairstow* [2003] All ER (D) 221 (Jul).

9 Company Directors Disqualification Act 1986 s 8(2). As to determining unfitness see para 1122 post.

10 le from the report, information or documents mentioned in note 2 supra.

11 Company Directors Disqualification Act 1986 s 8(2A) (added by the Insolvency Act 2000 s 6(1), (4)). As to disqualification undertakings see para 1108 ante.

12 Company Directors Disqualification Act 1986 s 8(2A)(a) (as added: see note 11 supra).

13 Ibid s 8(2A)(b) (as added: see note 11 supra). See *Re Blackspur Group plc*, *Re Atlantic Computer Systems plc* [1998] 1 WLR 422, CA (decided before the Company Directors Disqualification Act 1986 s 8 was amended by the Insolvency Act 2000 to provide for a effective regime of disqualification undertakings in lieu of court orders).

14 Company Directors Disqualification Act 1986 s 8(4).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1113 Application for disqualification order after investigation of company

NOTES 1-8--Where the company is an open-ended investment company, the reference to investigative material in the Company Directors Disqualification Act 1986 s 8(1) must be read as including a report made by inspectors under regulations made by virtue of the Financial Services and Markets Act 2000 s 262(2)(k) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 621); Company Directors Disqualification Act 1986 s 22D(2) (added by SI 2009/1941).

NOTE 2--Head (2) also information or documents obtained under the 1985 Act s 437, 446E, 451A or 453A: 1986 Act s 8(1A) (as added) (amended by the Companies (Audit, Investigations and Community Enterprise) Act 2004 Sch 2 para 28; the Companies Act 2006 s 1039; SI 2009/1941).

NOTE 8--The Secretary of State is entitled to bring disqualification proceedings in respect of allegations similar to those of which a director has been acquitted in criminal proceedings: *Re TransTec plc (No 2)*; *Secretary of State for Trade and Industry v Carr (No 2)* [2006] EWHC 2110 (Ch), [2007] 2 BCLC 495.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1114. Competition disqualification order.

1114. Competition disqualification order.

The court¹ must make a disqualification order² against a person if³:

- 1385 (1) an undertaking which is a company⁴ of which he is a director⁵ commits a breach of competition law⁶; and
- 1386 (2) the court considers that his conduct⁷ as a director makes him unfit to be concerned in the management of a company⁸.

The maximum period of disqualification under these provisions is 15 years⁹.

An application under these provisions for a disqualification order may be made by the Office of Fair Trading¹⁰ or by a specified regulator¹¹.

1 For these purposes, the court is the High Court: Company Directors Disqualification Act 1986 s 9E(1), (3) (s 9E added by the Enterprise Act 2002 s 204(1), (2)).

2 As to disqualification orders see para 1107 ante.

3 Company Directors Disqualification Act 1986 s 9A(1) (s 9A added by the Enterprise Act 2002 s 204(1), (2)).

4 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

5 For these purposes, 'director' includes shadow director: Company Directors Disqualification Act 1986 s 9E(1), (5) (as added: see note 1 supra). As to the meaning of 'director' see also para 1107 note 3 ante. As to the meaning of 'shadow director' see para 1107 note 13 ante.

6 Ibid s 9A(2) (as added: see note 3 supra). An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following: (1) the 'Chapter 1 prohibition' within the meaning of the Competition Act 1998 (prohibition on agreements, etc preventing, restricting or distorting competition: see COMPETITION vol 18 (2009) PARA 116 et seq); (2) the 'Chapter 2 prohibition' within the meaning of the Competition Act 1998 (prohibition on abuse of a dominant position: see COMPETITION vol 18 (2009) PARA 125 et seq); (3) the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmd 5179) (the 'EC Treaty') art 81 (prohibition on agreements, etc preventing, restricting or distorting competition: see COMPETITION vol 18 (2009) PARA 61 et seq); or (4) the EC Treaty art 82 (prohibition on abuse of a dominant position: see COMPETITION vol 18 (2009) PARA 68 et seq): Company Directors Disqualification Act 1986 s 9A(4) (as so added). For the purposes of head (1) or head (3) supra, references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings: s 9A(8) (as so added). The Competition Act 1998 s 60 (consistent treatment of questions arising under United Kingdom and Community law) applies in relation to any question arising by virtue of head (1) or head (2) supra as it applies in relation to any question arising under the Competition Act 1998 Pt 1 (ss 1-60) (see COMPETITION vol 18 (2009) PARA 150): Company Directors Disqualification Act 1986 s 9A(11) (as so added).

7 Conduct includes omission: ibid s 9E(1), (4) (as added: see note 1 supra).

8 Ibid s 9A(3) (as added: see note 3 supra). For the purpose of deciding under s 9A(3) (as added) whether a person is unfit to be concerned in the management of a company, the court: (1) must have regard to whether s 9A(6) (as added) applies to him; (2) may have regard to his conduct as a director of a company in connection with any other breach of competition law; (3) must not have regard to the matters mentioned in Sch 1 (see para 1122 post): s 9A(5) (as so added). Section s 9A(6) (as added) applies to a person if as a director of the company: (a) his conduct contributed to the breach of competition law mentioned in s 9A(2) (as added) (see head (1) in the text); (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it; (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach: s 9A(6) (as so

added). For the purposes of head (a) supra, it is immaterial whether the person knew that the conduct of the undertaking constituted the breach: s 9A(7) (as so added).

9 Ibid s 9A(9) (as added: see note 3 supra).

10 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

11 Company Directors Disqualification Act 1986 s 9A(10) (as added: see note 3 supra). Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which he or it has a function: (1) the Office of Communications (see TELECOMMUNICATIONS vol 97 (2010) PARA 2 et seq); (2) the Gas and Electricity Markets Authority (see FUEL AND ENERGY vol 19(1) (2007 Reissue) para 708 et seq); (3) the Director General of Water Services (see WATER AND WATERWAYS vol 100 (2009) PARA 109); (4) the Office of Rail Regulation (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 49 et seq); and (5) the Civil Aviation Authority (see AIR LAW vol 2 (2008) PARA 50 et seq): s 9E(1), (2) (s 9E as added (see note 1 supra); and s 9E(2) amended by the Communications Act 2003 s 406(1), Sch 17 para 83; and the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 2 para 19(j)). As from a day to be appointed, head (3) supra is amended so as to refer instead to the Water Services Regulation Authority: see the Company Directors Disqualification Act 1986 s 9E(2) (as so added and amended; and prospectively amended by the Water Act 2003 s 101(1), Sch 7 Pt 2 para 25). At the date at which this volume states the law no such day had been appointed.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1115. Competition undertakings.

1115. Competition undertakings.

If:

- 1387 (1) the Office of Fair Trading¹ or a specified regulator² thinks that in relation to any person an undertaking which is a company³ of which he is a director⁴ has committed or is committing a breach of competition law⁵;
- 1388 (2) the Office of Fair Trading or the specified regulator thinks that the conduct of the person⁶ as a director makes him unfit⁷ to be concerned in the management of a company⁸; and
- 1389 (3) the person offers to give the Office of Fair Trading or the specified regulator, as the case may be, a disqualification undertaking⁹,

the Office of Fair Trading or the specified regulator, as the case may be, may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order¹⁰.

The maximum period which may be specified in a disqualification undertaking is 15 years¹¹.

If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under the Company Directors Disqualification Act 1986 or to a disqualification order the periods specified in those undertakings or the undertaking and the order, as the case may be, run concurrently¹².

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq. The Company Directors Disqualification Act 1986 s 9A(4)-(8) (as added) (see para 1114 ante) applies for the purposes of s 9B (as added) as it applies for the purposes of s 9A (as added) but in the application of s 9A(5) (as added) (factors to be taken into consideration by a court when deciding whether a person is unfit to be concerned in the management of a company: see para 1114 note 8 ante), the reference to the court must be construed as a reference to the Office of Fair Trading or a specified regulator (as the case may be): s 9B(7) (s 9B added by Enterprise Act 2002 s 204(1), (2)).

2 As to specified regulators for the purposes of a breach of competition law see para 1114 note 11 ante.

3 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

4 As to the meaning of 'director' see para 1107 note 3 ante.

5 Company Directors Disqualification Act 1986 s 9B(1)(a) (as added: see note 1 supra). As to conduct by an undertaking which constitutes a breach of competition law see para 1114 note 6 ante. See also note 1 supra.

6 As to a person's conduct as a director see para 1121 note 9 post.

7 As to the factors to be taken into consideration by a court (see note 1 supra) when deciding under the Company Directors Disqualification Act 1986 s 9A(3) (as added) whether a person is unfit to be concerned in the management of a company see para 1114 note 8 ante.

8 Ibid s 9B(1)(b) (as added: see note 1 supra).

9 Ibid s 9B(1)(c) (as added: see note 1 supra). A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not: (1) be a director of a company; (2) act as receiver of a company's property; (3) in any way, whether directly or indirectly, be concerned or take part in the

promotion, formation or management of a company; (4) act as an insolvency practitioner: s 9B(3) (as so added). However, a disqualification undertaking may provide that a prohibition falling within heads (1) to (3) *supra* does not apply if the person obtains the leave of the court: s 9B(4) (as so added). See also para 1107 text and notes 3-9 *ante*.

10 Ibid s 9B(2) (as added: see note 1 *supra*). As to disqualification orders see para 1107 *ante*.

11 Ibid s 9B(5) (as added: see note 1 *supra*).

12 Ibid s 9B(6) (as added: see note 1 *supra*).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1116. Competition investigations.

1116. Competition investigations.

If the Office of Fair Trading¹ or a specified regulator² has reasonable grounds for suspecting that a breach of competition law has occurred³ it or he (as the case may be) may carry out an investigation for the purpose of deciding whether to make an application⁴ for a disqualification order⁵. If as a result of such an investigation, the Office of Fair Trading or a specified regulator proposes to apply⁶ for a disqualification order⁷, before making the application the Office of Fair Trading or regulator (as the case may be) must⁸:

- 1390 (1) give notice to the person likely to be affected by the application⁹; and
- 1391 (2) give that person an opportunity to make representations¹⁰.

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

2 As to specified regulators for the purposes of a breach of competition law see para 1114 note 11 ante.

3 As to conduct by an undertaking which constitutes a breach of competition law see para 1114 note 6 ante.

4 Ie under the Company Directors Disqualification Act 1986 s 9A (as added) (see para 1114 ante).

5 Ibid s 9C(1) (s 9C added by the Enterprise Act 2002 s 204(1), (2)). As to disqualification orders see para 1107 ante. For the purposes of such an investigation, the Competition Act 1998 ss 26-30 apply to the Office of Fair Trading and the specified regulators as they apply to the Office of Fair Trading for the purposes of an investigation under the Competition Act 1998 s 25 (see COMPETITION vol 18 (2009) PARA 129 et seq); Company Directors Disqualification Act 1986 s 9C(2) (as so added).

6 Ie under ibid s 9A (as added) (see para 1114 ante).

7 Ibid s 9C(3) (as added: see note 5 supra).

8 Ibid s 9C(4) (as added: see note 5 supra).

9 Ibid s 9C(4)(a) (as added: see note 5 supra).

10 Ibid s 9C(4)(b) (as added: see note 5 supra).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1117. Co-ordination.

1117. Co-ordination.

The Secretary of State¹ may make regulations² for the purpose of co-ordinating the performance of functions connected with competition disqualification orders and undertakings³ which are exercisable concurrently by two or more persons⁴.

¹ As to the Secretary of State see para 11 note 10 ante.

² The Competition Act 1998 s 54(5)-(7) applies to regulations made under the Company Directors Disqualification Act 1986 s 9D (as added) as it applies to regulations made under the Competition Act 1998 s 54 (see COMPETITION vol 18 (2009) PARA 147), and for that purpose in s 54: (1) references to 'Pt 1 functions' must be read as references to relevant functions (see note 3 infra); (2) references to 'a regulator' must be read as references to a specified regulator; (3) 'a competent person' also includes any of the specified regulators: Company Directors Disqualification Act 1986 s 9D(2) (s 9D added by the Enterprise Act 2002 s 204(1), (2)). As to specified regulators for the purposes of a breach of competition law see para 1114 note 11 ante. The power to make regulations under the Company Directors Disqualification Act 1986 s 9D (as added) must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 9D(3) (as so added). Such a statutory instrument may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate and may make different provision for different cases: s 9D(4) (as so added).

³ I.e. functions under *ibid* ss 9A-9C (as added) ('relevant functions') (see paras 1114-1116 ante).

⁴ *Ibid* s 9D(1) (as added: see note 2 supra).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1118. Disqualification for participation in fraudulent or wrongful trading.

1118. Disqualification for participation in fraudulent or wrongful trading.

Where the court¹ makes a declaration under the fraudulent trading provisions² or the wrongful trading provisions³ that a person is liable to make a contribution to a company's assets⁴, then, whether or not an application for such an order is made by any person, the court may, if it thinks fit, also make a disqualification order⁵ against the person to whom the declaration relates⁶.

The maximum period of disqualification which may be imposed under these provisions is 15 years⁷.

1 For the meaning of 'court' see para 1107 note 1 ante.

2 Ie under the Insolvency Act 1986 s 213 (see para 911 ante).

3 Ie under ibid s 214 (see para 914 ante).

4 As to a person's liability to contribute under these provisions see para 911 et seq ante. For the meaning of 'company' for these purposes see para 1107 note 4 ante.

5 As to disqualification orders see para 1107 ante.

6 Company Directors Disqualification Act 1986 s 10(1).

7 Ibid s 10(2). See *R v Devo* (1992) 14 Cr App Rep (S) 407 (disqualified for 8 years); *R v Millard* (1993) 15 Cr App Rep (S) 445 (disqualified for 8 years on appeal: *R v Ahmed* (1997) 2 Cr App Rep (S) 8 (disqualified for 10 years); *R v Thobani* [1998] 1 Cr App Rep (S) 227 (disqualified for 3 years).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1118 Disqualification for participation in fraudulent or wrongful trading

TEXT AND NOTES 1-6--Company Directors Disqualification Act 1986 s 10(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1119. Undischarged bankrupts.

1119. Undischarged bankrupts.

A person who acts as director¹ of a company² or who directly or indirectly takes part in or is concerned in the promotion, formation or management of a company³, without the leave of the court⁴, at a time when⁵ he is an undischarged bankrupt⁶, or a bankruptcy restrictions order is in force in respect of him⁷, commits an offence⁸ and is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁹. The offence is one of strict liability¹⁰.

A person who acts in contravention of these provisions is also personally responsible for all the relevant debts of the company incurred whilst he was involved in its management¹¹.

In England and Wales, the leave of the court may not be given unless notice of intention to apply for it has been served on the official receiver¹²; and it is the latter's duty, if he is of the opinion that it is contrary to the public interest that the application should be granted, to attend on the hearing of the application and oppose it¹³.

1 As to the meaning of 'director' see para 1107 note 3 ante.

2 For these purposes, 'company' includes an unregistered company or a company incorporated outside Great Britain which has an established place of business in Great Britain: Company Directors Disqualification Act 1986 s 22(1), (2)(a). For the meaning of 'unregistered company' see COMPANIES vol 15 (2009) PARA 1665. For the meaning of 'Great Britain' see para 12 note 2 ante. As to companies formed outside England and Wales which must nevertheless conform to certain requirements as to registration under the Companies Act 1985 see COMPANIES.

3 Under the Company Directors Disqualification Act 1986 s 11, the question of whether or not a defendant is concerned in the management of a company is an issue for the jury to determine, and any belief (including any positive belief) held by the defendant with regard to the nature and quality of his or her actions is irrelevant in relation to the necessary mental element: *R v Doring* [2002] EWCA Crim 1695, [2003] 1 Cr App Rep 143.

4 For these purposes, 'the court' is the court by which the person was adjudged bankrupt: Company Directors Disqualification Act 1986 s 11(2).

5 *Ibid* s 11(1) (substituted by the Enterprise Act 2002 s 257(3), Sch 21 para 5).

6 Company Directors Disqualification Act 1986 s 11(1)(a) (as substituted: see note 5 supra). As to discharge from bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 629 et seq.

7 *Ibid* s 11(1)(b) (as substituted: see note 5 supra). As to bankruptcy orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

8 *Ibid* s 11(1) (as substituted: see note 5 supra).

9 *Ibid* ss 11(1), 13 (s 11(1) as substituted: see note 5 supra). As to the statutory maximum see para 10 note 1 ante.

10 *R v Brockley* [1994] 1 BCLC 606, CA.

11 See the Company Directors Disqualification Act 1986 s 15(1)(a); and para 1144 post.

12 References in the Company Directors Disqualification Act 1986 to the official receiver, in relation to the winding up of a company or the bankruptcy of an individual, are references to any person who, by virtue of the Insolvency Act 1986 s 399 (see para 503 ante), is authorised to act as the official receiver in relation to that

winding up or bankruptcy; and, in accordance with s 401(2) (see para 507 ante), references in the Company Directors Disqualification Act 1986 to an official receiver include a person appointed as his deputy: s 21(1). As to the official receiver see para 503 et seq ante.

13 Ibid s 11(3). As to the exercise of the discretion to grant leave to be a director under s 11 (as amended) see *Re McQuillan* (1988) 5 BCC 137, NI CA.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1119 Undischarged bankrupts

NOTE 2--In the Company Directors Disqualification Act 1986 s 11, 'company' includes a company incorporated outside Great Britain that has an established place of business in Great Britain: Company Directors Disqualification Act 1986 s 11(4) (added by SI 2009/1941).

NOTE 12--Company Directors Disqualification Act 1986 s 21(1) amended: SI 2009/1941.

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1120. Failure to pay under county court administration order.

Where a court¹ revokes an administration order² against an individual, it may order that that person may not, except with the leave of the court which made the order, act as director³ or liquidator⁴ of, or directly or indirectly take part or be concerned in the promotion, formation or management of, a company⁵, for such period not exceeding one year as may be specified in the order⁶.

If a person acts in contravention of these provisions, he is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁷.

1 Ie under the Insolvency Act 1986 s 429 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 910).

2 Ie under the County Courts Act 1984 Pt VI (ss 112-117) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 893 et seq).

3 As to the meaning of 'director' see para 1107 note 3 ante.

4 As to liquidators generally see para 555 et seq ante.

5 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

6 Company Directors Disqualification Act 1986 s 12; Insolvency Act 1986 s 429(2)(b) (amended by the Enterprise Act 2002 s 269, Sch 23 paras 1, 15).

7 Company Directors Disqualification Act 1986 s 13; Insolvency Act 1986 ss 429(5), 430, Sch 10. As to the statutory maximum see para 10 note 1 ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1120 Failure to pay under county court administration order

NOTE 6--Company Directors Disqualification Act 1986 s 12 amended: SI 2009/1941.

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1121. Duty of court to disqualify unfit directors of insolvent companies.

The court¹ must make a disqualification order² against a person in any case where, on an application for this purpose³, the court is satisfied⁴:

- 1392 (1) that he is or has been a director⁵ of a company⁶ which has at any time become insolvent⁷, whether while he was a director or subsequently⁸; and
 1393 (2) that his conduct as a director⁹ of that company, either taken alone or taken together with his conduct as a director of any other company or other companies¹⁰, makes him unfit¹¹ to be concerned in the management of a company¹².

The minimum period of disqualification which may be imposed under these provisions is two years, and the maximum period which may be imposed is 15 years¹³.

These provisions apply both to foreigners outside the jurisdiction and to conduct which occurred outside the jurisdiction¹⁴.

1 For these purposes, and for the purposes of the Company Directors Disqualification Act 1986 s 7(2) (see para 1128 note 6 post), 'the court' means: (1) where the company in question is being or has been wound up by the court (see para 438 et seq ante), that court; (2) where the company in question is being or has been wound up voluntarily (see para 939 et seq ante), any court which has or (as the case may be) had jurisdiction to wind it up; (3) where neither head (1) nor (2) supra applies but an administrator (see para 145 et seq ante) or administrative receiver (see para 380 et seq ante) has at any time been appointed in respect of the company in question, any court which has jurisdiction to wind it up: s 6(3) (substituted by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 5; and amended by the Enterprise Act 2002 s 248(3), Sch 17 paras 40, 41(b)). The Insolvency Act 1986 s 117 (jurisdiction (England and Wales): see para 438 et seq ante) and s 120 (jurisdiction (Scotland)) apply for these purposes as if the references in the definitions of 'registered office' to the presentation of the petition for winding up were references: (a) in a case within head (2) supra, to the passing of the resolution for voluntary winding up; and (b) in a case within head (3) supra, to the appointment of the administrator or (as the case may be) administrative receiver: Company Directors Disqualification Act 1986 s 6(3A) (added by the Insolvency Act 2000 Sch 4 Pt I paras 1, 5; and amended by the Enterprise Act 2002 Sch 17 paras 40, 41(c)). However, nothing in the Company Directors Disqualification Act 1986 s 6(3) (as substituted and amended) invalidates any proceedings by reason of their being taken in the wrong court; and proceedings for or in connection with a disqualification order under s 6 (as amended), or in connection with a disqualification undertaking accepted under s 7 (see paras 1125, 1127-1128 post), may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced: s 6(3B) (added by the Insolvency Act 2000 Sch 4 Pt I paras 1, 5). In head (2) supra, the court having jurisdiction to wind up the company is the court having jurisdiction to wind up the company at the date when the disqualification proceedings are brought: *Re Lichfield Freight Terminal Ltd* [1997] 2 BCLC 109. The court continues to have jurisdiction to hear disqualification proceedings even after winding up is concluded: *Re Working Project Ltd*, *Re Fosterdown Ltd*, *Re Davies Flooring (Southern) Ltd* [1995] 1 BCLC 226.

2 As to disqualification orders see para 1107 ante.

3 As to the making of applications see para 1113 et seq ante.

4 Company Directors Disqualification Act 1986 s 6(1).

5 For these purposes, and for the purposes of *ibid* s 7 (see paras 1125, 1127-1128 post), 'director' includes a shadow director: s 6(3C) (added by the Insolvency Act 2000 Sch 4 Pt I paras 1, 5). As to the meaning of 'director', which for these purposes includes a de facto director, see also para 1107 note 3 ante. As to the meaning of 'shadow director' see para 1107 note 13 ante. See also *Re Promwalk Services Ltd*, *Frewen v Secretary of State for Trade and Industry* [2002] EWHC 2688 (Ch), [2003] 2 BCLC 305 (director believed himself

to have resigned before the relevant period but his resignation was found by the court to be ineffective and the director was held to account).

6 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

7 For these purposes, and for the purposes of the Company Directors Disqualification Act 1986 s 7 (see paras 1125, 1128 post), a company becomes insolvent if: (1) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; (2) the company enters administration; or (3) an administrative receiver of the company is appointed: s 6(2) (amended by the Enterprise Act 2002 Sch 17 paras 40, 41(a)).

Where an application is made for a disqualification order under the Company Directors Disqualification Act 1986 s 6 (as amended) by virtue of head (1) supra, and the company in question went into liquidation before 28 April 1986 (ie the date on which the provision replaced by s 6 (as amended) came into force: see the Insolvency Act 1985 s 235, Sch 9 Pt II para 2; and the Insolvency Act 1985 (Commencement No 3) Order 1986, SI 1986/463), the court may not make an order under the Company Directors Disqualification Act 1986 s 6 (as amended) unless it could have made a disqualification order under the Companies Act 1985 s 300 (repealed) as it had effect immediately before 28 April 1986: Company Directors Disqualification Act 1986 s 19(c), Sch 2 para 7. The Insolvency Act 1986 s 247 applies as regards references to a company's insolvency and to its going into liquidation (see para 9 note 3 ante): Company Directors Disqualification Act 1986 s 22(1), (3).

A company which has entered compulsory liquidation becomes insolvent for these purposes when the winding-up order is made and not when the winding-up petition is presented: *Re Walter L Jacob & Co Ltd, Official Receiver v Jacob* [1993] BCC 512. Where a petition for an administration order has been presented against a company, and an interim order has been made under the Insolvency Act 1986 s 9(4) (see para 154 ante), followed later by an administration order, the relevant date is the date of the latter order and not the interim order: *Secretary of State for Trade and Industry v Palmer* [1993] BCC 650, Ct of Sess. Where the company became insolvent by reason of more than one of the triggering events, namely liquidation, administration, or administrative receivership, the time runs from the first of those events; but, where a company has returned to solvency after one of the triggering events, and then returns to insolvency and a further triggering event occurs, then the two-year period may start to run again from the second triggering event: *Re Tasbian Ltd* [1991] BCLC 54, [1990] BCC 318, CA.

8 Company Directors Disqualification Act 1986 s 6(1)(a).

9 For these purposes, references to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that company: *ibid* s 6(2). The finding of the court on a person's conduct as a defendant in the proceedings, including as a witness, is capable of amounting to an additional ground of his unfitness: *Secretary of State for Trade and Industry v Reynard* [2002] EWCA Civ 497, [2002] 2 BCLC 625. There is no good reason for cutting down the width of the words 'matter connected with or arising out of the insolvency' so as to exclude the conduct of the director at the hearing of the disqualification proceedings: *Secretary of State for Trade and Industry v Reynard* supra at [10] per Mummery LJ.

10 See *Re Bath Glass Ltd* [1988] BCLC 329, 4 BCC 130. There is no limitation on the number of companies to which an application might refer: *Re Surrey Leisure Ltd, Official Receiver v Keam* [1999] 2 BCLC 457, CA (the Company Directors Disqualification Act 1986 s 6(1)(b) envisages a single 'lead' company and one or more collateral companies as sufficient to found the jurisdiction; but there may be more than one 'lead' company, and permitting a number of 'lead' companies would not give rise to any unfair procedure, nor would imposing a maximum on the number of 'lead' companies advance the cause of public protection). As to the relevance of a director's conduct with respect to his participation in the management of collateral companies other than the lead company see *Secretary of State for Trade and Industry v Ivens* [1997] 2 BCLC 334, CA. The conduct of a director whilst director of a foreign company may be taken into account: *Re Eurostem Maritime Ltd* [1987] PCC 190. The word 'companies' is not limited to companies of limited liability: *Re Polly Peck International plc (No 2)*, *Secretary of State for Trade and Industry v Ellis* [1994] 1 BCLC 574 at 579, [1993] BCC 890 at 895 per Lindsay J.

11 As to the matters to be taken into account for determining unfitness of directors see para 1122 post.

12 Company Directors Disqualification Act 1986 s 6(1)(b). Despite the use of the word 'makes' in the present tense in s 6(1)(b), the question which the court must ask itself is not whether the director is presently unfit to be a director, but whether the relevant conduct specified in s 6(1)(b) alone has fallen below the standards of probity and competence appropriate for persons to be directors of companies; the court does not need to be satisfied that a disqualification order is necessary in the public interest; and evidence tending to show that the director is unlikely to re-offend is relevant to mitigation and any application for leave under s 17 (see para 1139 post) only: *Secretary of State for Trade and Industry v Gray* [1995] 1 BCLC 276, CA; *Re Landhurst Leasing plc, Secretary of State for Trade and Industry v Ball* [1999] 1 BCLC 286 at 345 per Hart J (where it was held that if the court has found that relevant misconduct has occurred, disqualification must follow even though the court is of the opinion that the director is not, at the date of the hearing, unfit). The burden of proof is upon the Secretary of State to establish that the requirements of the Company Directors Disqualification Act 1986 s 6(1)

(a), (b) are satisfied: *Re Living Images Ltd* [1996] 1 BCLC 348; *Re Verby Print for Advertising Ltd, Fine v Secretary of State for Trade and Industry* [1998] 2 BCLC 23. See further para 1137 post. The more serious the allegation made against a director, the more the court will need the assistance of cogent evidence (*Re Living Images Ltd* supra) and the more important it is for the case against him to be set out clearly and with adequate particularity (*Secretary of State for Trade and Industry v Swan* [2003] EWHC 1780 (Ch), [2003] All ER (D) 372 (Jul)). Respondent directors are entitled to have the case against them strictly limited to the complaint as clarified by the Secretary of State: *Secretary of State for Trade and Industry v Swan* [2003] EWHC 1780 (Ch), [2003] All ER (D) 372 (Jul). See also *Re Deaduck Ltd, Baker v Secretary of State for Trade and Industry* [2000] 1 BCLC 148, [1999] All ER (D) 562 (disqualification order reconsidered despite a finding of breach of duty because the latter conduct was not the subject of the charge). As to the admissibility of evidence in disqualification proceedings see para 1145 post. As to the Secretary of State see para 11 note 10 ante.

13 Company Directors Disqualification Act 1986 s 6(4). As to the period of disqualification see para 1138 post.

14 *Re Seagull Manufacturing Co Ltd (No 2)* [1994] Ch 91, [1994] 1 BCLC 273.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1121 Duty of court to disqualify unfit directors of insolvent companies

TEXT AND NOTES 1-12--Disqualification orders under the 1986 Act s 6 are insolvency proceedings, and as such are subject the practice and procedural provisions of the Insolvency Rules 1986, SI 1986/1925, and not of the CPR: *Secretary of State for Trade and Industry v Paulin* [2005] EWHC 888 (Ch), [2005] 2 BCLC 667.

NOTE 1--A court has jurisdiction to entertain disqualification proceedings under the Company Directors Disqualification Act 1986 s 6(3)(c), where a company has been dissolved by operation of the Insolvency Act 1986 Sch 1B para 84(6): *Secretary of State for Trade and Industry v Arnold* [2007] EWHC 1933 (Ch), [2008] 1 BCLC 581.

NOTE 7--Company Directors Disqualification Act 1986 Sch 2 para 7 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1122. Matters for determining unfitness of directors.

1122. Matters for determining unfitness of directors.

Where it falls to a court¹ to determine whether a person's conduct as a director² of any particular company³ or companies makes him unfit to be concerned in the management of a company⁴, the court must, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular to the matters specified⁵ below⁶.

In determining whether he may accept a disqualification undertaking⁷ from any person, the Secretary of State must, as respects the person's conduct as a director of any company concerned, have regard to the same matters⁸.

In all cases, the court must have regard to:

- 1394 (1) any misfeasance or breach of fiduciary or other duty⁹ by the director in relation to the company¹⁰;
- 1395 (2) any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation¹¹ to account for, any money or other property of the company¹²;
- 1396 (3) the extent of the director's responsibility for the company entering into any transaction liable to be set aside under the provisions¹³ against debt avoidance¹⁴;
- 1397 (4) the extent of the director's responsibility for any failure by the company to comply with any of the provisions relating to:
 - 9
 - 9. (a) the company's duty¹⁵ to keep accounting records¹⁶;
 - 10. (b) where and for how long records are to be kept¹⁷;
 - 11. (c) the register of directors and secretaries¹⁸;
 - 12. (d) the obligation¹⁹ to keep and enter up the register of members²⁰;
 - 13. (e) the location of the register of members²¹;
 - 14. (f) the company's duty²² to make annual returns²³;
 - 15. (g) the company's duty²⁴ to register charges it creates²⁵;
 - 10
- 1398 (5) the extent of the director's responsibility for any failure by the directors of the company to comply with the provisions relating to the duty to prepare annual accounts²⁶ or the approval and signature²⁷ of the accounts²⁸.

1 For the meaning of 'court' see para 1107 note 1 ante.

2 For these purposes 'director' includes a shadow director: Company Directors Disqualification Act 1986 s 9(2) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 7(b)). As to the meaning of 'director', which for these purposes includes a de facto director, see also para 1107 note 3 ante. As to the meaning of 'shadow director' see para 1107 note 13 ante.

3 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

4 In every case, the function of the court in addressing the question of unfitness is to decide whether the conduct of which complaint is made by the Secretary of State, viewed cumulatively and taking into account any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons fit to be directors of companies (as to which see para 1123 post); unfitness might be shown by conduct which is dishonest (including conduct showing a want of probity or integrity) or by conduct which is merely incompetent: *Re Barings plc (No 5), Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433 at 483 per

Jonathan Parker J; affd [2000] 1 BCLC 523 at 535, CA, per Morritt LJ. Where the Secretary of State's case is based solely on allegations of incompetence (no dishonesty of any kind being alleged), the burden is on the Secretary of State to satisfy the court that the conduct complained of demonstrates incompetence of a high degree: *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433 at 483 per Jonathan Parker J; affd [2000] 1 BCLC 523 at 535, CA, per Morritt LJ. As to the Secretary of State see para 11 note 10 ante.

The list of matters set out in the Company Directors Disqualification Act 1986 Sch 1 (as amended) (see heads (1)-(5) in the text) is not exhaustive and the matters to which the court might have regard are not limited to the matters listed there: *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433 at 483 per Jonathan Parker J (affd [2000] 1 BCLC 523 at 535, CA, per Morritt LJ); *Re Migration Services International Ltd*, *Official Receiver v Webster* [2000] 1 BCLC 666 at 677-678 per Neuberger J. In considering the question of unfitness, the respondent's conduct has to be evaluated in context, so that the only extenuating circumstances which might be taken into account in addressing the question of unfitness are those which accompanied the conduct in question: *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433 at 483 per Jonathan Parker J (affd [2000] 1 BCLC 523 at 535, CA, per Morritt LJ). See also *Secretary of State for Trade and Industry v Goldberg* [2003] EWHC 2843 (Ch), [2004] 1 BCLC 597. The court may take into account the respondent's reliance on his fellow directors and on professional advisers and consider whether such reliance amounts to proper delegation of responsibility: *Re McNulty's Interchange Ltd* [1989] BCLC 709; *Re Park House Properties Ltd* [1997] 2 BCLC 530; *Re Verby Print for Advertising Ltd*, *Fine v Secretary of State for Trade and Industry* [1998] 2 BCLC 23; *Re Barings plc (No 5)* [1999] 1 BCLC 433; affd [2000] 1 BCLC 523, CA. See also *Re Stephenson Cobbold Ltd* [2000] 2 BCLC 614 (non-executive director who relied on financial information and assurances from the company's auditors and bookkeepers was not unfit); *Re Bradcrown Ltd*, *Official Receiver v Ireland* [2001] 1 BCLC 547 (reliance on advice had to be reasonable); *Secretary of State for Trade and Industry v Lewis* [2003] BCC 611 (directors reasonably acted on accountancy advice); *Secretary of State for Trade and Industry v Walker* [2003] EWHC 175 (Ch), [2003] 1 BCLC 363 (failure to take advice after directors became aware that company was not insolvent did not render them unfit).

5 le the matters mentioned in the Company Directors Disqualification Act 1986 s 9(1)(a), Sch 1 Pt I (paras 1-5A) (as amended) (see heads (1)-(5) in the text). References in Sch 1 (as amended) to the director and the company are to be read accordingly: s 9(1). The Secretary of State may by order modify any of the provisions of Sch 1; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient: s 9(4). The power to make such orders is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 9(5). Subject to such powers of modification, the references in Sch 1 (as amended) to an enactment contained in the Companies Act 1985 or the Insolvency Act 1986 includes, in relation to any time before the coming into force of the enactment, the corresponding enactment in force at that time: Company Directors Disqualification Act 1986 s 9(3).

In the application of Sch 1 Pt I (as amended) in relation to any person who is a director of an open-ended investment company, any reference to a provision of the Companies Act 1985 is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, or of any rules made under reg 6 (Financial Services Authority rules: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 621 et seq): Company Directors Disqualification Act 1986 Sch 1 Pt I para 5A (added by the Open-Ended Investment Companies Regulations (Investment Companies with Variable Capital), SI 1996/2827, reg 75, Sch 8 para 10; and substituted by the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 84, Sch 7 Pt I para 9).

6 Company Directors Disqualification Act 1986 s 9(1)(a) (amended by the Insolvency Act 2000 s 15(1), Sch 4 Pt I paras 1, 7(a), Sch 5).

7 As to disqualification undertakings see para 1108 ante.

8 Company Directors Disqualification Act 1986 s 9(1A)(a) (added by the Insolvency Act 2000 s 6(1), (6)). References in the Company Directors Disqualification Act 1986 Sch 1 (as amended) to the director and the company are to be read accordingly: s 9(1A)(a) (as so added). See note 5 supra.

9 Whether a director has been in breach of his duties to the company is commonly expressed in terms of a failure to meet the standards of competence and probity required: see *Re Grayan Building Services Ltd (in liquidation)* [1995] Ch 241, sub nom *Secretary of State for Trade and Industry v Gray* [1995] 1 BCLC 276, CA; *Re Landhurst Leasing plc*, *Secretary of State for Trade and Industry v Ball* [1999] 1 BCLC 286; *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433 (affd [2000] 1 BCLC 523, CA); *Re Bradcrown Ltd*, *Official Receiver v Ireland* [2001] 1 BCLC 547; *Secretary of State for Trade and Industry v Goldberg* [2003] EWHC 2843 (Ch), [2004] 1 BCLC 597. However, a finding of breach of duty is neither necessary nor sufficient in itself to find a director unfit: *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433 at 486 per Jonathan Parker J; affd [2000] 1 BCLC 523 at 535, CA, per Morritt LJ. See generally para 688 et seq ante; and COMPANIES vol 14 (2009) PARA 532 et seq.

10 Company Directors Disqualification Act 1986 Sch 1 Pt I para 1.

- 11 See COMPANIES vol 14 (2009) PARA 539.
- 12 Company Directors Disqualification Act 1986 Sch 1 Pt I para 2.
- 13 Ie the Insolvency Act 1986 Pt XVI (ss 423-425) (see para 853 et seq ante).
- 14 Company Directors Disqualification Act 1986 Sch 1 Pt I para 3.
- 15 Ie under the Companies Act 1985 s 221 (as substituted).
- 16 Company Directors Disqualification Act 1986 Sch 1 Pt I para 4(a). See *Secretary of State for Trade and Industry v Arif* [1997] 1 BCLC 34, [1996] BCC 586 (failure by directors to fulfil statutory obligations to keep accounting records); *Re Queens Moat Houses plc, Secretary of State for Trade and Industry v Bairstow* [2004] EWHC 1730 (Ch), [2004] All ER (D) 333 (Jul) (failure by directors to fulfil statutory obligations to prepare accounts giving true and fair view of affairs of the company and of the group).
- 17 Company Directors Disqualification Act 1986 Sch 1 Pt I para 4(b). As to the provisions under which records must be kept see the Companies Act 1985 s 222 (as substituted); and COMPANIES vol 15 (2009) PARA 708 et seq.
- 18 Company Directors Disqualification Act 1986 Sch 1 Pt I para 4(c). As to the provisions concerning the register of directors and secretaries see the Companies Act 1985 s 288 (as amended); and COMPANIES vol 14 (2009) PARA 499.
- 19 Ie under the Companies Act 1985 s 352.
- 20 Company Directors Disqualification Act 1986 Sch 1 Pt I para 4(d).
- 21 Ibid Sch 1 Pt I para 4(e). As to the provisions concerning the location of the register of members see the Companies Act 1985 s 353; and COMPANIES vol 14 (2009) PARA 347.
- 22 Ie under ibid s 363 (as substituted).
- 23 Company Directors Disqualification Act 1986 Sch 1 Pt I para 4(f) (substituted by the Companies Act 1989 s 139(4)).
- 24 Ie under the Companies Act 1985 ss 399, 415.
- 25 Company Directors Disqualification Act 1986 Sch 1 Pt I para 4(h).
- 26 Ie under the Companies Act 1985 s 226 (as substituted) or s 227 (as substituted).
- 27 Ie under ibid s 233 (as substituted).
- 28 Company Directors Disqualification Act 1986 Sch 1 Pt I para 5 (substituted by the Companies Act 1989 s 23, Sch 10 para 35(1), (3)).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1122 Matters for determining unfitness of directors

NOTE 5--Company Directors Disqualification Act 1986 s 9(3), Sch 1 Pt I para 5A omitted: SI 2009/1941. In the application of the Company Directors Disqualification Act 1986 Sch 1 Pt I in relation to a director of an open-ended investment company, a reference to a provision of the Companies Act 2006 is to be taken to be a reference to the corresponding provision of SI 2001/1228, or of rules made under reg 6 (see FINANCIAL

SERVICES AND INSTITUTIONS vol 49 (2008) PARA 621 et seq): Company Directors Disqualification Act 1986 s 22D(3) (added by SI 2009/1941).

TEXT AND NOTE 10--Company Directors Disqualification Act 1986 Sch 1 Pt I para 1 amended: SI 2009/1941.

NOTES 13, 14--Company Directors Disqualification Act 1986 Sch 1 Pt I para 3 amended: SI 2009/1941.

TEXT AND NOTES 15-28--Company Directors Disqualification Act 1986 Sch 1 para 5 further substituted: SI 2008/948.

TEXT AND NOTES 15-25--Company Directors Disqualification Act 1986 Sch 1 Pt I para 4 substituted: SI 2009/1941.

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1123. Standards of probity and competence required.

Where it falls to a court¹ to determine whether a person's conduct as a director² of any particular company³ or companies makes him unfit to be concerned in the management of a company⁴, the court must, as respects his conduct as a director of that company or, as the case may be, each of those companies⁵, have regard in particular, where the company has become insolvent⁶, to the matters specified⁷ below⁸.

In determining whether he may accept a disqualification undertaking⁹ from any person, the Secretary of State¹⁰ must, as respects the person's conduct as a director of any company concerned, have regard in particular, where the company has become insolvent, to the same matters¹¹.

The specified matters are:

- 1399 (1) the extent of the director's responsibility for the causes of the company becoming insolvent¹²;
 - 1400 (2) the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for, in whole or in part¹³;
 - 1401 (3) the extent of the director's responsibility for the company entering into any transaction or giving any preference which is liable to be set aside¹⁴;
 - 1402 (4) the extent of the director's responsibility for any failure by the directors of the company to comply with the provisions¹⁵ relating to the duty to call creditors' meetings in a creditors' voluntary winding up¹⁶;
 - 1403 (5) any failure by the director to comply with any obligation imposed on him by or under the provisions relating to¹⁷:
- 11
- 16. (a) the company's statement of affairs¹⁸ in administration¹⁹;
 - 17. (b) the statement of affairs²⁰ to an administrative receiver²¹;
 - 18. (c) the directors' duty²² to attend meetings and in respect of the statement of affairs in a creditors' voluntary winding up²³;
 - 19. (d) the statement of affairs²⁴ in a winding up by the court²⁵;
 - 20. (e) the duty²⁶ of anyone with company property to deliver it up²⁷; and
 - 21. (f) the duty²⁸ to co-operate with office-holders²⁹.
- 12

1 For the meaning of 'court' see para 1107 note 1 ante.

2 As to the meaning of 'director', which for these purposes includes 'de facto director', see also para 1107 note 3 ante.

3 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

4 See para 1122 note 4 ante.

5 See para 1121 note 10 ante.

6 For these purposes, the Company Directors Disqualification Act 1986 s 6(2) (meaning of a company 'becoming insolvent': see para 1121 note 7 ante) applies as it applies for the purposes of s 6 (as amended) (see para 1121 ante) and s 7 (see paras 1125, 1127-1128 post): s 9(2).

7 Ie the matters mentioned in *ibid* s 9(1)(b), Sch 1 Pt II (paras 6-10) (as amended) (see heads (1)-(5) in the text). References in Sch 1 (as amended) to the director and the company are to be read accordingly: s 9(1). As to Sch 1 (as amended) generally see also para 1122 note 5 ante.

8 Ibid s 9(1)(b) (amended by the Insolvency Act 2000 ss 8, 15(1), Sch 4 Pt I paras 1, 7(a), Sch 5). The court should properly address the question of the director's personal responsibility for all relevant matters: *Secretary of State for Trade and Industry v Gash* [1997] 1 BCLC 341, sub nom *Secretary of State for Trade and Industry v Taylor* [1997] 1 WLR 407 (although the director would have been wiser to resign, he was entitled to remain on the board and to use such influence as he had to try to bring trading to an end in the belief that there was no reasonable prospect of avoiding insolvency).

9 As to disqualification undertakings see para 1108 ante.

10 As to the Secretary of State see para 11 note 10 ante.

11 Company Directors Disqualification Act 1986 s 9(1A)(b) (added by the Insolvency Act 2000 s 6(1), (6)). References in the Company Directors Disqualification Act 1986 Sch 1 (as amended) to the director and the company are to be read accordingly: s 9(1A) (as so added).

12 Ibid Sch 1 Pt II para 6. The courts will take a broad approach to this issue: *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433; *affd* [2000] 1 BCLC 523, CA. See also *Secretary of State for Trade and Industry v Creegan* [2001] EWCA Civ 1742, [2002] 1 BCLC 99; *Re Queens Moat Houses plc*, *Secretary of State for Trade and Industry v Bairstow* [2004] EWHC 1730 (Ch), [2004] All ER (D) 333 (Jul).

13 Company Directors Disqualification Act 1986 Sch 1 Pt II para 7.

14 Ibid Sch 1 Pt II para 8. The transaction or preference mentioned in the text is liable to be set aside under the Insolvency Act 1986 s 127 (see para 700 ante) or ss 238-240 (see paras 843 et seq ante). A preference is given if: (1) in undertaking the transaction the company had a desire or wish to improve the creditor's position in the event of an insolvent liquidation; and (2) the company was influenced by that desire in deciding to make the alleged preference: *Re Living Images Ltd* [1996] 1 BCLC 348. Once it is shown that a preference has been given, it has to be shown that the director acted in a way which was blameworthy, ie that he was aware both of the desire and the fact that that influenced the company to act for the benefit of the creditor, before he can be disqualified under the Company Directors Disqualification Act 1986 Sch 1 Pt I para 8: *Re Living Images Ltd* supra. See also *Re Sykes (Butchers) Ltd (in liquidation)*, *Secretary of State for Trade and Industry v Richardson* [1998] 1 BCLC 110.

15 Ie the Insolvency Act 1986 s 98 (see para 945 post).

16 Company Directors Disqualification Act 1986 Sch 1 Pt II para 9.

17 Ibid Sch 1 Pt II para 10. The court may have regard to any relevant breach of the Insolvency Act 1986 when deciding whether to make a disqualification order under the Company Directors Disqualification Act 1986 s 6 (as amended) (see para 1121 ante) and not just the provisions specified in Sch 1 Pt II para 10: *Re Migration Services International Ltd, Official Receiver v Webster* [2000] 1 BCLC 666.

18 Ie under the Insolvency Act 1986 s 8, Sch B1 para 47 (as added) (see para 266 et seq ante).

19 Company Directors Disqualification Act 1986 Sch 1 Pt II para 10(a) (amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 para 12).

20 Ie under the Insolvency Act 1986 s 47 (see para 403 ante).

21 Company Directors Disqualification Act 1986 Sch 1 Pt II para 10(b).

22 Ie under the Insolvency Act 1986 s 99 (see para 947 ante).

23 Company Directors Disqualification Act 1986 Sch 1 Pt II para 10(d).

24 Ie under the Insolvency Act 1986 s 131 (see para 519 et seq ante).

25 Company Directors Disqualification Act 1986 Sch 1 Pt II para 10(e).

26 Ie under the Insolvency Act 1986 s 234 (see para 675 ante).

27 Company Directors Disqualification Act 1986 Sch 1 Pt II para 10(f).

28 le under the Insolvency Act 1986 s 235 (see para 678 ante).

29 Company Directors Disqualification Act 1986 Sch 1 Pt II para 10(g).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1123 Standards of probity and competence required

NOTE 12--It is not an answer to a charge of unfitness for a director to contend that the matter was left to others, unless and except to the extent that it was reasonable to do so: *Secretary of State v Thornbury* [2007] EWHC 3202 (Ch), [2008] 1 BCLC 139.

NOTE 14--Company Directors Disqualification Act 1986 Sch 1 Pt II para 8 amended: SI 2009/1941.

NOTE 16--Company Directors Disqualification Act 1986 Sch 1 Pt II para 9 amended: SI 2009/1941.

NOTES 17-29--Company Directors Disqualification Act 1986 Sch 1 Pt II para 10 amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1124. Examples of misconduct.

1124. Examples of misconduct.

The court may consider matters of general conduct in addition to the more limited questions of whether specific statutory provisions have been breached, although a typical application for disqualification will include more than one complaint of misconduct¹.

The types of misconduct, and cases where such misconduct has been discussed, are numerous but include the following:

- 1404 (1) failure to keep adequate accounting records or file returns²;
- 1405 (2) trading with 'phoenix' companies³;
- 1406 (3) continuing to draw remuneration whilst insolvent and drawing excessive remuneration⁴;
- 1407 (4) inadequate capitalisation of a company⁵;
- 1408 (5) preferences⁶ and other breaches of duty⁷;
- 1409 (6) trading with no reasonable prospect of paying creditors⁸;
- 1410 (7) trading at the expense of the Crown⁹;
- 1411 (8) failure to co-operate with the official receiver¹⁰.

1 *Re Sykes (Butchers) Ltd (in liquidation), R v Secretary of State for Trade and Industry v Richardson* [1998] 1 BCLC 110. See also *Secretary of State for Trade and Industry v McTighe (No 2)* [1996] 2 BCLC 477, CA (the court is entitled to consider whether individual examples of misconduct alone demonstrate unfitness to be concerned in the management of a company and is not required only to consider the conduct of the directors 'in the round'). See also *Secretary of State for Trade and Industry v Reynard* [2002] EWCA Civ 497, [2002] 2 BCLC 625 (cited in para 1121 note 9 ante).

2 *Re Bath Glass Ltd* [1988] BCLC 329, 4 BCC 130; *Re Rolus Properties Ltd* (1988) 4 BCC 446; *Re Chartmore Ltd* [1990] BCLC 673; *Re Pamstock Ltd* [1994] 1 BCLC 716; *Re Firedart Ltd, Official Receiver v Fairall* [1994] 2 BCLC 340; *Re Richborough Furniture Ltd* [1996] 1 BCLC 507, [1996] BCC 155; *Re Galeforce Pleating Co Ltd* [1999] 2 BCLC 704; *Re Promwalk Services Ltd, Frewen v Secretary of State for Trade and Industry* [2002] EWHC 2688 (Ch), [2003] 2 BCLC 305; *Secretary of State for Trade and Industry v Goldberg* [2003] EWHC 2843 (Ch), [2004] 1 BCLC 597.

3 *Re Swift 736 Ltd, Secretary of State for Trade and Industry v Ettinger* [1993] BCLC 896, [1993] BCC 312, CA; *Re Douglas Construction Services Ltd* [1988] BCLC 397, 4 BCC 553; *Re Lo-Line Electric Motors Ltd* [1988] Ch 477, [1988] 2 All ER 692; *Re McNulty's Interchange Ltd* [1989] BCLC 709, 4 BCC 533; *Re Ipcon Fashions Ltd* (1989) 5 BCC 773; *Re Keypak Homecare Ltd (No 2)* [1990] BCLC 440, [1990] BCC 117; *Re Travel Mondial (UK) Ltd* [1991] BCLC 120, [1991] BCC 224; *Re Linvale Ltd* [1993] BCLC 654; *Secretary of State for Trade and Industry v McTighe* [1997] BCC 224.

4 *Re Stanford Services Ltd* [1987] BCLC 607, 3 BCC 326; *Re McNulty's Interchange Ltd* [1989] BCLC 709, 4 BCC 533; *Re Ipcon Fashions Ltd* (1989) 5 BCC 773; *Re Cargo Agency Ltd* [1992] BCLC 686, [1992] BCC 388; *Re Keypak Homecare Ltd (No 2)* [1990] BCLC 440, [1990] BCC 117; *Re ECM (Europe) Electronics Ltd* [1992] BCC 268; *Re Travel Mondial (UK) Ltd* [1991] BCLC 120, [1991] BCC 224; *Re Moorgate Metals Ltd* [1995] 1 BCLC 503; *Secretary of State for Trade and Industry v Van Hengel* [1995] 1 BCLC 545, CA (a director in setting salaries of the board must keep in mind what the company could afford as well as what was the going rate for the job were the director to be employed elsewhere); *Re Ward Sherrard Ltd* [1996] BCC 418; *Re Amaron Ltd, Secretary of State for Trade and Industry v Lubrani (No 2)* [2001] 1 BCLC 562 (decision to carry on paying same levels of remuneration while the performance of the company sharply deteriorated was culpable); *Official Receiver v Stern* [2001] EWCA Civ 1787, [2002] 1 BCLC 119 (drawings made for director's own benefit in excess of the remuneration to which he was entitled).

5 *Re Pamstock Ltd* [1994] 1 BCLC 716; *Re Chartmore Ltd* [1990] BCLC 673; *Re Austinsuite Furniture Ltd* [1992] BCLC 1047; *Re Peppermint Park Ltd* [1998] BCC 23.

6 *Re Living Images Ltd* [1996] 1 BCLC 348, [1996] BCC 112; *Secretary of State for Trade and Industry v Gray* [1995] 1 BCLC 276, CA; *Re Austinsuite Furniture Ltd* [1992] BCLC 1047; *Re Continental Assurance Co of London plc*, *Secretary of State for Trade and Industry v Burrows* [1997] 1 BCLC 48, [1996] BCC 888; *Secretary of State for Trade and Industry v Banarse* [1997] 1 BCLC 653; *Re Sykes (Butchers) Ltd (in liquidation)*, *Secretary of State for Trade and Industry v Richardson* [1998] 1 BCLC 110 (payments intended to produce a personal advantage for director himself, regardless of the interests of other creditors of the company, regarded as morally reprehensible and indicative of a lack of commercial probity and thus unfitness to be a director); *Re Funtime Ltd* [2000] 1 BCLC 247.

7 See para 1122 note 9 ante.

8 *Re Living Images Ltd* [1996] BCC 112; *Re Synthetic Technology Ltd*, *Secretary of State for Trade and Industry v Joiner* [1993] BCC 549; *Re Hitco 2000 Ltd* [1995] 2 BCLC 63 (evidence relating to the misuse of the company's bank account and continuing to trade at the creditors' risk); *Re Richborough Furniture Ltd* [1996] 1 BCLC 507, [1996] BCC 155; *Secretary of State for Trade and Industry v Laing* [1996] 2 BCLC 324; *Secretary of State for Trade and Industry v Collins* [2000] 2 BCLC 223, CA. Operating a policy of not paying creditors who do not press for payment, or of paying only those who are essential to the company being able to continue to trade, merits a finding of unfitness: *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164, [1991] 3 All ER 578, CA; *Secretary of State for Trade and Industry v McTighe (No 2)* [1996] 2 BCLC 477, CA; *Re Hopes (Heathrow) Ltd*, *Secretary of State for Trade and Industry v Dyer* [2001] 1 BCLC 575; *Re Amaron Ltd*, *Secretary of State for Trade and Industry v Lubrani (No 2)* [2001] 1 BCLC 562; *Secretary of State for Trade and Industry v Creegan* [2001] EWCA Civ 1742, [2002] 1 BCLC 99; but see *Re UNO plc and World of Leather plc*, *Secretary of State for Trade and Industry v Gill* [2004] EWHC 933 (Ch), [2004] All ER (D) 345 (Apr) (trading at risk of customers' deposits did not constitute unfitness when directors reasonably believed that companies would avoid formal insolvency and were not acting dishonestly or for personal gain).

9 *Re Dawson Print Group Ltd* [1987] BCLC 601, 3 BCC 322; *Re Stanford Services Ltd* (1987) 3 BCC 326; *Re Lo-Line Electric Motors Ltd* [1988] Ch 477, [1988] 2 All ER 692; *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164, [1991] 3 All ER 578, CA (not paying Crown debts one part of a deliberate policy of not paying creditors who do not press for payment); *Re Swift 736 Ltd*, *Secretary of State for Trade and Industry v Ettinger* [1993] BCC 312, CA; *Secretary of State for Trade and Industry v McTighe (No 2)* [1996] 2 BCLC 477, CA; *Re Verby Print for Advertising Ltd*, *Fine v Secretary of State for Trade and Industry* [1998] 2 BCLC 23 (non-payment of Crown debts whilst a company is trading constitutes a policy of discrimination, making a period of disqualification appropriate); *Re Structural Concrete Ltd* [2000] 26 LS Gaz R 35, (2000) Times, 5 July (it was difficult to envisage the exceptional circumstances in which a company's policy of deliberate non-payment of a Crown debt would not necessarily result in a finding of unfitness of the directors); *Re Amaron Ltd*, *Secretary of State for Trade and Industry v Lubrani (No 2)* [2001] 1 BCLC 562 (directors caused company to trade unfairly at the expense of the Inland Revenue despite evidence of correspondence with the Inland Revenue and an arrangement made for monthly payments).

10 *Re Tansoft Ltd* [1991] BCLC 339; *Secretary of State for Trade and Industry v McTighe (No 2)* [1996] 2 BCLC 477, CA. As to the official receiver see para 503 et seq ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1125. Reports to the Secretary of State.

1125. Reports to the Secretary of State.

If it appears to the official receiver¹, the liquidator², the administrator³, or the administrative receiver⁴, that the conditions which impose a duty on the court to make a disqualification order⁵ are satisfied as respects a person who is or has been a director⁶ of the company in question, the official receiver, the liquidator, the administrator or, as the case may be, the administrative receiver, must forthwith report the matter to the Secretary of State⁷.

1 Company Directors Disqualification Act 1986 s 7(3)(a). As to the official receiver see para 503 et seq ante. As to a company which is being wound up by the court in England and Wales (see para 438 et seq ante).

2 Ibid s 7(3)(b). As to liquidators see para 555 et seq ante.

3 Ibid s 7(3)(c) (substituted by the Enterprise Act 2002 s 248(3), Sch 17 paras 40, 42). As to administrators see para 145 et seq ante.

4 Company Directors Disqualification Act 1986 s 7(3)(d). This provision applies in the case of a company of which there is an administrative receiver (see para 380 et seq ante). For these purposes, 'administrative receiver' has the meaning given by the Insolvency Act 1986 s 251 (see COMPANIES vol 15 (2009) PARA 1337): Company Directors Disqualification Act 1986 s 22(3). As to administrative receivers generally see para 380 et seq ante.

5 Ie the conditions mentioned in ibid s 6(1) (see para 1121 ante).

6 As to the meaning of 'director', which for these purposes includes a de facto director, see para 1107 note 3 ante.

7 Company Directors Disqualification Act 1986 s 7(3). As to the Secretary of State see para 11 note 10 ante. The question whether statutory reports provided to the Secretary of State under s 7(3) are privileged depends on whether there is a public interest requiring protection from disclosure sufficient to override the concerns of the administration of justice reflected in the disclosure rights given to litigants: *Re Barings plc, Secretary of State for Trade and Industry v Baker* [1998] Ch 356, [1998] 1 All ER 673 (in the absence of a claim for public interest immunity, there was no public interest that required privilege to be accorded to the report and its disclosure to a respondent may be ordered).

Any report made to the Secretary of State under the Company Directors Disqualification Act 1986 s 7(3) by the liquidator of a company which the courts in England and Wales have jurisdiction to wind up and which passes a resolution for voluntary winding up on or after 30 September 1996, or by an administrative receiver of a company appointed otherwise than under the Insolvency Act 1986 s 51 (power to appoint receiver under the law of Scotland) on or after 30 September 1996, or by the administrator of a company which the courts in England and Wales have jurisdiction to wind up which enters administration on or after 30 September 1996, must be made in the form prescribed in the Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 3(2), Schedule, Form D1 (substituted by SI 2001/764), or in a form which is substantially similar, and in the manner and to the extent required by the applicable form: Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, rr 1(3), 3(1), (2) (r 3(1) amended by SI 2003/2096). The form referred to in the Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 4(3) (see para 1126 post) may be used with such variations, if any, as the circumstances may require: r 5.

UPDATE

1107-1145 Disqualification Orders and Undertakings

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1126. Returns by office-holders.

1126. Returns by office-holders.

Where it appears to the liquidator of a company¹, to the administrative receiver², or to the administrator³ (each of whom for these purposes is referred to as 'the office-holder'), that the company has at any time become insolvent⁴, there may be furnished to the Secretary of State by the office-holder at, any time during the period of six months from the relevant date⁵, a return with respect to every person who was, on the relevant date, a director⁶ or shadow director⁷ of the company, or had been a director or shadow director of the company at any time in the three years immediately preceding that date⁸.

It is, however, the duty of an office-holder to furnish a return complying with these provisions to the Secretary of State⁹:

- 1412 (1) where he is in office in relation to the company on the day one week before the expiry of the period of six months from the relevant date, not later than the expiry of such period¹⁰;
- 1413 (2) where he vacates office (otherwise than by death) before the day one week before the expiry of the period of six months from the relevant date, within 14 days after his vacation of office except where he has furnished such a return on or prior to the day one week before the expiry of such period¹¹.

If an office-holder without reasonable excuse fails to comply with this duty, he is guilty of an offence¹² and on summary conviction is liable to a fine not exceeding level 3 on the standard scale¹³ and, on conviction after continued contravention, is liable to a daily default fine¹⁴.

1 Ie the liquidator of a company which the courts in England and Wales have jurisdiction to wind up which passes a resolution for voluntary winding up on or after 30 September 1996: Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, rr 1(3), 3(1)(a). As to liquidators see para 555 ante.

2 Ie an administrative receiver of a company appointed, otherwise than under the Insolvency Act 1986 s 51 (power to appoint receiver under the law of Scotland), on or after 30 September 1996: Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, rr 1(3), 3(1)(b). For the meaning of 'administrative receiver' see para 1125 note 4 ante.

3 Ie the administrator of a company which the courts in England and Wales have jurisdiction to wind up which enters administration on or after 30 September 1996: *ibid* rr 1(3), 3(1)(c). As to administration see para 145 et seq ante.

4 *Ibid* r 4(1). For the meaning of 'become insolvent' see the Company Directors Disqualification Act 1986 s 6(2); and para 1121 note 7 ante.

5 For these purposes, 'the relevant date' means:

- 81 (1) in the case of a company in creditors' voluntary winding up, there having been no declaration of solvency by the directors under the Insolvency Act 1986 s 89 (see para 941 ante), the date of the passing of the resolution for voluntary winding up;
- 82 (2) in the case of a company in members' voluntary winding up, the date on which the liquidator forms the opinion that, at the time when the company went into liquidation, its assets were insufficient for the payment of its debts and other liabilities and the expenses of winding up;

83 (3) in the case of the administrative receiver, the date of his appointment; and

84 (4) in the case of the administrator, the date that the company enters administration,

and for the purpose of head (3) supra, the only appointment of an administrative receiver to be taken into account in determining the relevant date is that appointment which is not that of a successor in office to an administrative receiver who has vacated office either by death or pursuant to s 45 (see para 429 ante): Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 4(4) (amended by SI 2003/2096).

6 As to the meaning of 'director' see para 1107 note 3 ante.

7 As to the meaning of 'shadow director' see para 1107 note 13 ante.

8 Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 4(2). The return must be made in the form prescribed in r 4(3), Schedule, Form D2 (substituted by SI 2001/764), or in a form which is substantially similar, and in the manner and to the extent required by the form: Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 4(3). The form referred to in r 4(3) may be used with such variations, if any, as the circumstances may require: r 5.

9 Ibid r 4(5). A return need not be provided under these provisions by an office-holder if he has, whilst holding that office in relation to the company, since the relevant date, made a report under r 3 (see para 1125 ante) with respect to all persons falling within r 4(2) (see the text and notes 1-8 supra): r 4(6).

10 Ibid r 4(5)(a).

11 Ibid r 4(5)(b).

12 Ibid r 4(7). The Insolvency Act 1986 s 431 (summary proceedings), as it applies to England and Wales, has effect in relation to an offence under the Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 4(7) as to offences under the Insolvency Act 1986 Pts I-VII (ss 1-251) (as amended): Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 4(8).

13 Ibid r 4(7)(a). As to the standard scale see para 31 note 4 ante.

14 Ie he is liable on a second or subsequent summary conviction of the offence to a fine of one-tenth of level 3 on the standard scale for each day on which the contravention is continued: ibid r 4(7)(b). As to daily default fines see para 10 note 1 ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(2) GROUNDS FOR DISQUALIFICATION/1127. Request for information from office-holders.

1127. Request for information from office-holders.

The Secretary of State¹ or the official receiver² may require the liquidator³, administrator⁴ or administrative receiver⁵ of a company or the former liquidator, administrator or administrative receiver of a company to furnish him with such information with respect to any person's conduct as a director⁶ of the company, and to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director, as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function⁷ of his under the provisions of the Company Directors Disqualification Act 1986⁸. In such a case, the court, on the application of the Secretary of State or, as the case may be, the official receiver, may make an order directing compliance within such period as may be specified⁹; and the court's order may provide that all costs of and incidental to the application are to be borne by the person to whom the order is directed¹⁰.

1 As to the Secretary of State see para 11 note 10 ante.

2 As to the official receiver see para 503 et seq ante.

3 As to liquidators see para 555 et seq ante.

4 As to administrators see para 145 et seq ante.

5 For the meaning of 'administrative receiver' see para 1125 note 4 ante.

6 See para 1128 post.

7 I.e. the functions of the Secretary of State and of the official receiver under the Company Directors Disqualification Act 1986 s 7 (see para 1128 post).

8 Ibid s 7(4). Documents and transcripts which have been obtained by an administrator under the Insolvency Act 1986 ss 235, 236 (see paras 678-679 ante) may be disclosed to the Secretary of State: *Re Polly Peck International plc, ex p Joint Administrators* [1994] BCC 15; approved in *Re Pantmaenog Timber Co Ltd (in liquidation)* [2003] UKHL 49, [2004] 1 AC 158, [2003] 4 All ER 18 (because the Company Directors Disqualification Act 1986 and the Insolvency Act 1986 form part of the same statutory scheme, the powers conferred by s 236 can lawfully be exercised for the purpose of obtaining evidence for use in disqualification proceedings).

9 Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909, r 6(1), (2).

10 Ibid r 6(3). Documents in the possession of a current or former liquidator, administrator, or administrative receiver of a company are not in the control of the Secretary of State or the official receiver for the purposes of disclosure under the regime now set out in CPR Pt 31 (see CIVIL PROCEDURE vol 11 (2009) PARA 538 et seq): *Re Lombard Shipping and Forwarding Ltd* [1993] BCLC 238.

UPDATE

1107-1145 Disqualification Orders and Undertakings

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1128. Application by the Secretary of State: unfit directors of insolvent companies.

(3) APPLICATION FOR DISQUALIFICATION

1128. Application by the Secretary of State: unfit directors of insolvent companies.

If it appears to the Secretary of State¹ that it is expedient in the public interest² that a disqualification order³ should be made against any person, an application for the making of such an order against that person may be made by the Secretary of State or, if the Secretary of State so directs in the case of a person who is or has been a director⁴ of a company which is being or has been wound up by the court in England and Wales, by the official receiver⁵.

Except with the leave of the court⁶, such an application for the making of a disqualification order against any person may not be made after the end of the period of two years beginning with the day on which the company of which that person is or has been a director became insolvent⁷.

If the proceedings are prosecuted in a dilatory manner, the proceedings may be struck out for want of prosecution⁸.

Instead of applying, or proceeding with an application, for a disqualification order, the Secretary of State may, if it appears to him that the conditions regarding the court's duty to disqualify unfit directors of insolvent companies⁹ are satisfied as respects any person who has offered to give him a disqualification undertaking¹⁰, accept the undertaking if it appears to him that it is expedient in the public interest that he should do so¹¹.

1 As to the Secretary of State see para 11 note 10 ante.

2 The question of expediency in the public interest is a matter for the Secretary of State rather than for the court: *Re Blackspur Group plc, Secretary of State for Trade and Industry v Davies* [1998] 1 WLR 422 at 426, [1998] 1 BCLC 676 at 680, CA, per Lord Woolf MR; *Re Barings plc (No 2), Secretary of State for Trade and Industry v Baker* [1999] 1 All ER 311 at 324 per Jonathan Parker J (affd [1999] 1 All ER 311 at 342, [1999] 1 WLR 1985 at 1989, CA, per Swinton Thomas LJ); *Re Blackspur Group plc (No 3), Secretary of State for Trade and Industry v Davies (No 2)* [2001] EWCA Civ 1595 at [10], [2002] 2 BCLC 263 at [10] per Chadwick LJ (the legislation must be taken to reflect Parliament's view that the Secretary of State is in a much better position than the court to gauge what the public interest requires in relation to the regulation of directors' conduct). However, the court may stay disqualification proceedings for abuse of process where to allow the proceedings to continue will bring the administration of justice into disrepute among right-thinking people: *Re Barings plc (No 2), Secretary of State for Trade and Industry v Baker* supra (no stay merely because a director had successfully resisted disciplinary proceedings from the regulatory authority, as the question to be answered in the different proceedings is materially different); *Re Launchexcept Ltd, Secretary of State for Trade and Industry v Tillman* [2000] 1 BCLC 36, CA (the fact that the defendant's conduct as a director of one company and its named subsidiaries had been held not to be blameworthy did not prevent subsequent proceedings in respect of other companies where the issues before the court differed in the respective proceedings).

Where a director is subject to both criminal and civil sanctions, a balance must be struck between allowing a fair criminal trial and protecting the public against unfit directors: *Secretary of State for Trade and Industry v Crane* [2001] 2 BCLC 222 (refusal to stay proceedings pending outcome of possible criminal proceedings not breach of right to fair trial). See also *Secretary of State for Trade and Industry v Rayna* [2001] 2 BCLC 48 (application to restore proceedings following defendant's conviction not an abuse of process if founded on different basis to criminal proceedings); *Re Denis Hilton Ltd* [2002] 1 BCLC 302 (civil proceedings following criminal proceedings in which disqualification was not dealt with is not an abuse of process). The court has the power to intervene to prevent injustice where the continuation of one set of proceedings might prejudice the fairness of the trial of other proceedings: *Secretary of State for Trade and Industry v Crane* supra. See also para 1145 post.

3 le under the Company Directors Disqualification Act 1986 s 6 (see para 1121 ante).

4 For the meaning of 'director' for these purposes see the Company Directors Disqualification Act 1986 s 6(3); and para 1121 note 5 ante.

5 Ibid s 7(1) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 6(a)). For the meaning of 'the official receiver' see para 1119 note 12 ante. Where the company is not yet being wound up by the court, the Secretary of State may still direct the official receiver to bring proceedings pursuant to the powers in the Insolvency Act 1986 s 400 (see para 504 ante); but in such circumstances the proceedings must still be brought in the name of the Secretary of State, not the official receiver: *Re Probe Data Systems Ltd* (1989) 5 BCC 384; *Re NP Engineering and Security Products Ltd* [1995] 2 BCLC 585 (revsd on another point [1998] 1 BCLC 208, CA). Where the applicant relies on the appointment of a receiver, the disqualification proceedings may be stayed to allow the company to challenge the validity of the appointment; but, unless the appointment is set aside in validly constituted proceedings, the applicant may rely on it: *Secretary of State for Trade and Industry v Jabble* [1998] 1 BCLC 598, CA.

6 For the meaning of 'the court' for these purposes see the Company Directors Disqualification Act 1986 s 6(3); and para 1121 note 1 ante.

7 Company Directors Disqualification Act 1986 s 7(2). For the meaning of a company 'becoming insolvent' for these purposes see s 6(2); and para 1121 note 7 ante. Where an application is made under s 7(2) to bring proceedings out of time, the test is whether the Secretary of State or the official receiver has shown a good reason for the extension of time: *Re Crestjoy Products Ltd* [1990] BCC 23; *Secretary of State for Trade and Industry v McTighe*, *Re Copecrest Ltd* [1994] 2 BCLC 284, CA. The length of the delay, the reasons for the delay, the strength of the case against the director and the degree of prejudice caused by the delay are relevant factors to be taken into account by the court in determining whether to grant leave: *Re Probe Data Systems Ltd (No 3)*, *Secretary of State for Trade and Industry v Desai* [1992] BCLC 405 at 416, [1992] BCC 110 at 118, per Scott LJ; *Secretary of State for Trade and Industry v McTighe*, *Re Copecrest Ltd* supra; *Secretary of State for Trade and Industry v Davies* [1996] 4 All ER 289, CA (the inadequacy of the reasons for the delay by the Secretary of State is merely one of the considerations that has to be taken into account); *Re Stormont Ltd*, *Secretary of State for Trade and Industry v Cleland* [1997] 1 BCLC 437 (for leave to be granted, the Secretary of State must show as a minimum that there is a fairly arguable case for saying that the respondent's conduct was such as to justify disqualification, and it is legitimate to examine the conduct of the Department of Trade and Industry prior to the hearing of the application to see whether the Department had acted with diligence). The list of factors is not exclusive of all other matters but in most cases it is likely to be so: *Re Polly Peck International plc (No 2)*, *Secretary of State for Trade and Industry v Ellis* [1993] BCC 890 at 894, per Lindsay J. Where it is sought to bring proceedings against a director of a company not originally joined as respondent, the correct procedure is to issue proceedings separate from the existing proceedings seeking leave to issue proceedings out of time: *Re Westmid Packaging Services Ltd* [1995] BCC 203.

8 *Re Noble Trees Ltd* [1993] BCLC 1185; *Official Receiver v B Ltd* [1994] 2 BCLC 1; *Re Manlon Trading Ltd* [1996] Ch 136, [1995] 1 BCLC 578, CA. Where there has been a lengthy delay between the start of disqualification proceedings and their conclusion, the court must assess the events to make sure that there had been no contravention of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (right to a fair trial: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134): *Re Blackspur Group plc*, *Secretary of State for Trade and Industry v Eastaway* [2001] 1 BCLC 653 (delay attributable to respondent's attempt to avoid hearing). See also *EDC v United Kingdom* [1998] BCC 370, EComHR (failure to proceed within reasonable time). Before a claim is struck out on the grounds of delay, some prejudice arising from the delay must be shown: *R v Abermeadow Ltd* [2000] 2 BCLC 824 (delay had no effect on ability of witnesses to give evidence).

9 le the conditions mentioned in the Company Directors Disqualification Act 1986 s 6(1) (see para 1121 ante).

10 As to disqualification undertakings see para 1108 ante.

11 Company Directors Disqualification Act 1986 s 7(2A) (added by the Insolvency Act 2000 s 6(1), (3)). See also note 2 supra. The Secretary of State's discretion under the Company Directors Disqualification Act 1986 s 7(2A) (as added) is unfettered and he is entitled to decide that it would be inexpedient in the public interest to accept an undertaking without a schedule of unfit conduct: *Re Blackspur Group plc*, *Secretary of State for Trade and Industry v Davies* [2001] EWCA Civ 1595, [2002] 2 BCLC 263.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1129. Application on grounds of unfitness or following investigation into company's affairs.

1129. Application on grounds of unfitness or following investigation into company's affairs.

An application¹ for a disqualification order² against any person ('the defendant') may be made by the Secretary of State³ or the official receiver⁴ (on the grounds of the person's association with insolvent companies and unfitness to be concerned with the management of a company⁵), or by the Secretary of State following an investigation⁶ into the company's affairs, or by the Office of Fair Trading⁷ or a specified regulator⁸ (regarding a breach of competition law and unfitness to be concerned in the management of a company)⁹. Any such application must be made by claim form¹⁰.

1 As to the procedure see para 1132 et seq post. These provisions apply to applications made on or after 11 January 1988; and any applications made before that date are governed by the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1986, SI 1986/612 (revoked): see the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, rr 1(1), (3), 11(2).

2 See para 1107 ante. The provisions of *ibid* r 1(3) extend to applications by disqualified directors for leave to continue to act as a director (see para 1139 post) since leave is part and parcel of the disqualification process: *Re Britannia Homes Centres Ltd, Official Receiver v McCahill* [2001] 2 BCLC 63.

3 As to the Secretary of State see para 11 note 10 ante.

4 For the meaning of 'the official receiver' see para 1119 note 12 ante.

5 *Ie* under the Company Directors Disqualification Act 1986 s 7(1) (see para 1128 ante).

6 *Ie* under *ibid* s 8 (see para 1113 ante).

7 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

8 *Ie* under the Company Directors Disqualification Act 1986 s 9A (as added) (see para 1114 ante). As to specified regulators for the purpose of breaches of competition law see para 1114 note 11 ante.

9 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 1(3) (amended by SI 1999/1023; SI 2003/1367).

10 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 2(2) (substituted by SI 1999/1023). The claim form to be used is provided by the relevant practice direction (*ie Practice Direction--Directors Disqualification Proceedings*) and the claimant must use the alternative procedure for starting claims (*ie* CPR Pt 8: see CIVIL PROCEDURE vol 11 (2009) PARAS 117, 127 et seq): Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 2(2) (as so substituted). The Civil Procedure Rules ('CPR') 1998, SI 1998/3132, and any relevant practice direction, apply in respect of any application to which the provisions of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 (as amended) apply, except where those rules make provision to inconsistent effect: r 2(1) (substituted by SI 1999/1023). CPR 8.1(3) (power of court to order claim to continue as if claimant had not used CPR Pt 8: see CIVIL PROCEDURE vol 11 (2009) PARA 127), CPR 8.2 (contents of the claim form: see CIVIL PROCEDURE vol 11 (2009) PARA 128) and CPR 8.7 (CPR Pt 20 claims: see CIVIL PROCEDURE vol 11 (2009) PARA 134) do not apply, but the Insolvency Rules 1986, SI 1986/1925, rr 7.47, 7.49 (see paras 1035-1036 ante) do apply: Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, rr 2(3), (4) (substituted by SI 1999/1023).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1129 Application on grounds of unfitness or following investigation into company's affairs

TEXT AND NOTES--Replaced. The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 r 1(3) applies to an application made under the Company Directors Disqualification Act 1986 on or after 6 August 2007 (1) for leave to commence proceedings for a disqualification order after the end of the specified period under s 7(2); (2) to enforce any duty arising under s 7(4); (3) for a disqualification order where made (a) by the Secretary of State or the official receiver under s 7(1) (with regards to disqualification of unfit directors of insolvent companies); (b) by the Secretary of State under s 8 (with regards to disqualification after investigation of company); or (c) by the Office of Fair Trading or a specified regulator under s 9A (with regards to a competition disqualification order); (4) under s 8A (variation of disqualification undertaking); or (5) for leave to act under certain provisions of the 1986 Act: SI 1987/2023 r 1(3) (substituted by SI 2007/1906). Subject to SI 1987/2023 r 2(5), an application must be made either by claim form or by an application notice: SI 1987/2023 r 2(2) (substituted by SI 2007/1906). See also SI 1987/2023 rr 2(5), 2A (added by SI 2007/1906).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1130. Application for disqualification order.

1130. Application for disqualification order.

A person intending to apply for the making of a disqualification order¹ by the court having jurisdiction to wind up a company² must give not less than ten days' notice of his intention to the person against whom the order is sought³; and on the hearing of the application the person against whom the order is sought may appear and himself give evidence or call witnesses⁴. On the hearing of any application⁵ made by the Secretary of State⁶, the official receiver⁷, the Office of Fair Trading⁸, the liquidator⁹ or a specified regulator¹⁰, the applicant must appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses¹¹.

1 See para 1107 ante.

2 See para 1107 note 1 ante.

3 Failure to give proper notice is a procedural irregularity only which does not on its own invalidate the application: *Secretary of State for Trade and Industry v Langridge* [1991] Ch 402, [1991] 3 All ER 591, CA. However, taken with other factors, shortness of notice may be borne in mind by the court in determining whether the procedure adopted by the Secretary of State as a whole has been unfair to the director and an abuse of process: *Secretary of State for Trade and Industry v Swan* [2003] EWHC 1780 (Ch), [2003] All ER (D) 372 (Jul) (director suffered harm because lack of notice prevented him from responding to irrelevant evidence relied upon by the Secretary of State but an appropriate remedy would focus on the evidence rather than on the proceedings themselves). Where the court can of its own motion make a disqualification order, there is no statutory requirement of notice, though the rules of natural justice require that a person should be given some notice that the court is contemplating making a disqualification order: *Secretary of State for Trade and Industry v Langridge* supra at 414 and 598 per Balcombe LJ.

4 Company Directors Disqualification Act 1986 s 16(1).

5 Ie under the Company Directors Disqualification Act 1986.

6 As to the Secretary of State see para 11 note 10 ante.

7 For the meaning of 'the official receiver' see para 1119 note 12 ante.

8 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

9 As to liquidators see para 555 ante.

10 Ie within the meaning of the Company Directors Disqualification Act 1986 s 9E (as added) (breach of competition law) (see para 1114 note 11 ante).

11 Ibid s 16(3) (amended by the Enterprise Act 2002 s 204(1), (6)); Company Directors Disqualification Act 1986 s 16(4) (added by the Enterprise Act 2002 s 204(1), (7)).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1131. Persons entitled to apply on grounds of general misconduct in connection with companies.

1131. Persons entitled to apply on grounds of general misconduct in connection with companies.

An application to a court with jurisdiction to wind up companies for the making of a disqualification order¹ against any person on the grounds that that person has been convicted of an indictable offence², has been in persistent breach of companies legislation³, or has been guilty of fraud in the winding up⁴, may be made by the Secretary of State⁵ or the official receiver⁶ or the liquidator⁷ or any past or present member⁸ or creditor⁹ of any company in relation to which that person has committed or is alleged to have committed an offence or other default¹⁰.

1 See para 1107 ante.

2 Ie under the Company Directors Disqualification Act 1986 s 2 (as amended) (see para 1109 ante).

3 Ie under ibid s 3 (see para 1110 ante).

4 Ie under ibid s 4 (see para 1111 ante).

5 As to the Secretary of State see para 11 note 10 ante.

6 For the meaning of 'the official receiver' see para 1119 note 12 ante.

7 As to liquidators see para 555 ante.

8 As to who qualifies as a member of a company see COMPANIES vol 14 (2009) PARA 321.

9 For the meaning of 'creditor' see COMPANIES vol 15 (2009) PARA 1427.

10 Company Directors Disqualification Act 1986 s 16(2) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 11). As to the making of applications see para 1130 ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1132. The case against the respondent.

1132. The case against the respondent.

There must, at the time when the claim form¹ is issued, be filed in court² evidence in support of the application for a disqualification order³; and copies of the evidence must be served with the claim form on the defendant⁴.

The evidence must be by one or more affidavits, except where the claimant is the official receiver⁵, in which case it may be in the form of a written report, with or without affidavits by other persons, which is treated as if it had been verified by affidavit by him and is prima facie evidence of any matter contained in it⁶.

There must in the affidavit or affidavits or, as the case may be, the official receiver's report, be included a statement of the matters by reference to which the defendant is alleged to be unfit⁷ to be concerned in the management of a company⁸.

1 See para 1129 ante.

2 For these purposes, 'file in court' means deliver to the court for filing: Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 1(2)(f) (substituted by SI 1999/1023).

3 See para 1107 ante.

4 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 3(1) (amended by SI 1999/1023). For the meaning of 'the defendant' see para 1129 ante. Non-compliance with the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 3(1) (as amended) is a mere irregularity; non-compliance does not nullify the proceedings and the court has power to waive any irregularity: *Secretary of State for Trade and Industry v McTighe* [1994] 2 BCLC 284 at 287, CA, per Hoffmann LJ; *Re Jazzgold Ltd* [1994] 1 BCLC 38 at 42 per Micklethwait J. A defendant may apply to strike out the claim and on the hearing of the application for striking out the court may consider further evidence filed by the applicant: *Re Jazzgold Ltd* supra.

5 For the meaning of 'the official receiver' see para 1119 note 12 ante.

6 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 3(2) (amended by SI 1999/1023). The report may be made by a deputy official receiver: *Re Homes Assured Corp plc, Official Receiver v Dobson* [1994] 2 BCLC 71. Exhibits and annexures are also treated as prima facie evidence: *Re City Investment Centres Ltd* [1992] BCLC 956; *Re Moonbeam Cards Ltd* [1993] BCLC 1099. Statements obtained under the Companies Act 1985 s 447 (as amended) are admissible even though hearsay; this affects weight but not admissibility: *Re Rex Williams Leisure plc (in administration)* [1994] Ch 350, [1994] 4 All ER 27, CA; *Secretary of State for Trade and Industry v Ashcroft* [1998] Ch 71, [1997] 3 All ER 86, CA (no discernible distinction between an application for a disqualification order by the Secretary of State based on information gathered for him by his own officials and one based on information supplied to him by an 'office-holder'). See also *Secretary of State for Trade and Industry v Baker (No 2)*, *Re Barings plc (in administration) (No 2)* [1998] 1 BCLC 590 (the Secretary of State is entitled to put before the court all the information upon which his decision to commence proceedings is based regardless of whether such information may be in whole or in part hearsay or double hearsay). Although the judge has a residual discretion to refuse to receive an administrator's affidavit containing evidence, the inability of an administrator to attend for cross-examination does not exclude the affidavit and the judge is not entitled to disregard the availability of an alternative suitable witness: *Secretary of State for Trade and Industry v Moffatt* [1996] 2 BCLC 16.

7 See paras 1113, 1121-1122 ante.

8 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 3(3) (amended by SI 1999/1023). The claimant's evidence must give a balanced and fair view: *Secretary of State for*

Trade and Industry v Swan [2003] EWHC 1780 (Ch), [2003] All ER (D) 372 (Jul); and see further para 1121 note 12 ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1133. Indorsement on claim form.

1133. Indorsement on claim form.

On the issue of the claim form¹, the following information to the defendant² must be indorsed on it³:

- 1414 (1) that the application is made in accordance with the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987⁴;
- 1415 (2) the periods of disqualification which, in accordance with the relevant enactments, the court has power to impose⁵;
- 1416 (3) that the application for a disqualification order may⁶ be heard and determined summarily, without further or other notice to the defendant, and that, if it is so heard and determined, the court may impose disqualification for a period of up to five years⁷;
- 1417 (4) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the defendant's case, disqualification for any period longer than five years, it will not make a disqualification order on that occasion but will adjourn the application to be heard, with further evidence, if any, at a later date to be notified⁸; and
- 1418 (5) that any evidence which the defendant wishes to be taken into consideration by the court must be filed in court⁹ in accordance with the time limits¹⁰ for the filing in court of evidence¹¹.

¹ See para 1129 ante.

² For the meaning of 'the defendant' see para 1129 ante.

³ Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 4 (amended by SI 1999/1023).

⁴ Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 4(a).

⁵ Ibid r 4(b). This provision applies: (1) where the application is made under the Company Directors Disqualification Act 1986 s 7 (see paras 1127-1128 ante), for a period of not less than two, and up to 15, years; and (2) where the application is under s 8 (see para 1113 ante) or s 9A (as added) (see para 1114 ante), for a period of up to 15 years: Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 4(b) (amended by SI 2003/1367).

⁶ Ie in accordance with the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 (as amended).

⁷ Ibid r 4(c) (amended by SI 1999/1023).

⁸ Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 4(d) (amended by SI 1999/1023).

⁹ For the meaning of 'file in court' see para 1132 note 2 ante.

¹⁰ Ie imposed under the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 6 (see para 1135 post).

11 Ibid r 4(e) (amended by SI 1999/1023). The time limits must be set out on the claim form: see the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 4(e) (as so amended).

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1107-1145 Disqualification Orders and Undertakings

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1134. Service and acknowledgment of claim form.

1134. Service and acknowledgment of claim form.

The claim form¹ must be served on the defendant² by sending it by first class post to his last-known address; and the date of service is, unless the contrary is shown, deemed to be the seventh day next following that on which the claim form was posted³.

Where any process or order of the court or other document is required⁴ to be served on any person who is not in England and Wales, the court may order service on him of that process or order or other document to be effected within such time and in such manner as it thinks fit, and may also require such proof of service as it thinks fit⁵.

The claim form served on the defendant must be accompanied by a form⁶ of acknowledgment of service⁷.

The acknowledgment of service must state that the defendant should indicate⁸:

- 1419 (1) whether he contests the application on the grounds that, in the case of any particular company⁹:
- 13
22. (a) he was not a director¹⁰ or shadow director¹¹ of the company at a time when conduct of his, or of other persons, in relation to that company is in question¹²; or
23. (b) his conduct as a director or shadow director of that company was not as alleged in support of the application for a disqualification order¹³;
- 14
- 1420 (2) whether, in the case of any conduct of his, he disputes the allegation that it makes him unfit to be concerned in the management of a company¹⁴; and
- 1421 (3) whether he, while not resisting the application for a disqualification order, intends to adduce mitigating factors with a view to justifying only a short period of disqualification¹⁵.

1 See para 1129 ante.

2 For the meaning of 'the defendant' see para 1129 ante.

3 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 5(1) (amended by SI 1999/1023).

4 I.e. under proceedings subject to the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 (as amended).

5 Ibid r 5(2).

6 I.e. as provided for by practice direction (see *Practice Direction--Directors Disqualification Proceedings*).

7 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, 5(3) (substituted by SI 1999/1023). The provisions of CPR 8.3(2) (contents of an acknowledgment of service: see CIVIL PROCEDURE VOL 11 (2009) PARA 130) do not apply: Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 5(3) (as so substituted).

8 Ibid r 5(4) (amended by SI 1999/1023).

9 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 5(4)(a).

- 10 As to the meaning of 'director' see para 1107 note 3 ante.
- 11 As to the meaning of 'shadow director' see para 1107 note 13 ante.
- 12 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 5(4)(a) (i).
- 13 Ibid r 5(4)(a)(ii).
- 14 Ibid r 5(4)(b). See paras 1113-1115, 1121-1123 ante.
- 15 Ibid r 5(4)(c).

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1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1135. Evidence.

1135. Evidence.

The defendant¹ must, within 28 days from the date of service of the claim form², file in court³ any affidavit evidence in opposition to the application he wishes the court to take into consideration, and must forthwith serve upon the claimant a copy of such evidence⁴. The claimant must, within 14 days from receiving the copy of the defendant's evidence, file in court any further evidence in reply he wishes the court to take into consideration and must forthwith serve a copy of that evidence upon the defendant⁵. A defendant has no right to disclosure from the claimant where the claimant is the Secretary of State⁶ or the official receiver⁷ where he is not also the liquidator⁸, but he does have such a right where the claimant is the official receiver who is also the liquidator⁹.

1 For the meaning of 'the defendant' see para 1129 ante.

2 See para 1129 ante.

3 For the meaning of 'file in court' see para 1132 note 2 ante.

4 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 6(1) (amended by SI 1999/1023). The provisions of CPR 8.5 (filing and serving written evidence: see CIVIL PROCEDURE vol 11 (2009) PARA 132) and CPR 8.6(1) (evidence under CPR Pt 8: see CIVIL PROCEDURE vol 11 (2009) PARA 133) do not apply to the requirements of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 6 (as amended): r 6(3) (added by SI 1999/1023). A defendant does not have the option of omitting to file affidavit evidence and giving evidence orally at the trial: *Re Rex Williams Leisure plc (in administration)* [1994] Ch 350, [1994] 4 All ER 27, CA.

5 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 6(2) (amended by SI 1999/1023).

6 See, however, *Re Astra Holdings plc, Secretary of State for Trade and Industry v Anderson* [1998] 2 BCLC 44 (letter from inspectors appointed by the Secretary of State expressing the view that the defendant ought not to be disqualified held to be clearly relevant and disclosable). As to the Secretary of State see para 11 note 10 ante.

7 For the meaning of 'the official receiver' see para 1119 note 12 ante.

8 As to liquidators see para 555 ante.

9 *Re Lombard Shipping and Forwarding Ltd* [1993] BCLC 238. In practice a defendant will normally receive full disclosure of relevant documents whoever has made the application. See *Re Barings plc, Secretary of State for Trade and Industry v Baker* [1998] Ch 356, [1998] 1 All ER 673. An order for disclosure may be made under CPR 31.17 (court's powers to order disclosure: see CIVIL PROCEDURE vol 11 (2009) PARA 550) where the claimant has demonstrated that the documents sought are relevant to the allegations faced: *Re Skyward Builders plc* [2002] EWHC 1788 (Ch), [2002] 2 BCLC 750 (disqualified director's fraudulent conduct might be a defence to the allegations facing the defendant and communications conducted largely between the disqualified director and a firm of accountants might help to explain a number of features).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1136. Hearing of application; making and setting aside of disqualification orders.

1136. Hearing of application; making and setting aside of disqualification orders.

Where a claim form is issued¹, the date fixed by the court for the first hearing of the claim must be not less than eight weeks from the date of issue of the claim form². The hearing must in the first instance be before the registrar³ in open court⁴; and the registrar must either determine the case on the date fixed or adjourn it⁵. The registrar must adjourn the case for further consideration⁶ if:

- 1422 (1) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than five years is appropriate⁷; or
- 1423 (2) he is of the opinion that questions of law or fact arise which are not suitable for summary determination⁸.

If the registrar adjourns the case for further consideration, he must⁹:

- 1424 (a) direct whether the case is to be heard by a registrar, or, if he thinks it appropriate, by a judge, for determination by him¹⁰;
 - 1425 (b) state the reasons for the adjournment¹¹; and
 - 1426 (c) give directions as to the following matters¹²:
- 15
- 24. (i) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the defendant¹³;
 - 25. (ii) the filing in court and the service of further evidence, if any, by the parties¹⁴;
 - 26. (iii) such other matters as the registrar thinks necessary or expedient with a view to an expeditious disposal of the application¹⁵; and
 - 27. (iv) the time and place of the adjourned hearing¹⁶.
- 16

Where a case is adjourned other than to a judge, it may be heard by the registrar who originally dealt with the case or by another registrar¹⁷.

In all disqualification applications, the court may direct a pre-trial review, a case management conference or pre-trial checklists¹⁸ and will fix a trial date or trial period¹⁹.

The court may make a disqualification order against the defendant, whether or not the latter appears, and whether or not he has completed and returned the acknowledgment of service of the claim form²⁰, or filed²¹ evidence²²; any disqualification order made in the absence of the defendant may be set aside or varied by the court on such terms as it thinks just²³.

Official receivers and deputy official receivers have right of audience in any proceedings to which the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 apply, whether the application is made by the Secretary of State²⁴ or by the official receiver²⁵ at his direction, and whether made in the High Court or a county court²⁶.

No specific provision is made for appeals from disqualification orders, but it has been held that the provisions relating to appeals in winding-up proceedings apply to proceedings under the Company Directors Disqualification Act 1986²⁷.

The costs of disqualification proceedings are in the discretion of the court, but the usual rules on costs will apply, so that the claimant will normally be liable to pay the costs of an unsuccessful application or if proceedings are discontinued, and the defendant will pay the costs on the standard basis if the application is successful²⁸.

Although on an application for a disqualification order it is not permissible for the parties merely to seek a consent order, the court has jurisdiction to deal with an application for a disqualification order by a summary procedure where the court is satisfied that the undisputed evidence is sufficient to establish unfitness, and that the potential impact of disputed evidence would not substantially affect the seriousness of that unfitness²⁹.

1 See para 1129 ante.

2 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 7(1) (substituted by SI 1999/1023).

3 For these purposes, 'registrar' has the same meaning as in the Insolvency Rules 1986, SI 1986/1925, r 13.2(4), (5) (see para 1055 ante): Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 1(2)(e) (substituted by SI 1999/1023).

4 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 7(2). All evidence should be filed before the first hearing of the disqualification application: *Practice Direction--Directors Disqualification Proceedings* para 9.8. Prior to the first hearing of the disqualification application, the time for serving evidence may be extended by written agreement between the parties: *Practice Direction--Directors Disqualification Proceedings* para 9.7. After the first hearing, the extension of time for serving evidence is governed by CPR 2.11 (see CIVIL PROCEDURE vol 11 (2009) PARA 248) and CPR 29.5 (see CIVIL PROCEDURE vol 11 (2009) PARA 297): *Practice Direction--Directors Disqualification Proceedings* para 9.7.

5 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 7(3).

6 Ibid r 7(4).

7 Ibid r 7(4)(a).

8 Ibid r 7(4)(b).

9 Ibid r 7(5).

10 Ibid r 7(5)(a). An application which is likely to be long and complex and to engage the public interest in its outcome should be heard by a judge unless, in the interests of justice, it is preferable that it is heard sooner before a registrar: *Lewis v Secretary of State for Trade and Industry* [2001] 2 BCLC 597. The registrar's direction as to whether the matter should be heard by a judge or a registrar may at any time be varied by the court either on application or of its own initiative; if the direction is varied in the absence of any of the parties, notice will be given to the parties: *Practice Direction--Directors Disqualification Proceedings* para 10.6(1).

11 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 7(5)(b).

12 Ibid r 7(5)(c). All interim directions should in so far as possible be sought at the first hearing of the disqualification application so that the disqualification application can be determined at the earliest possible date; and the parties should take all such steps as they respectively can to avoid successive directions hearings: *Practice Direction--Directors Disqualification Proceedings* para 10.4.

13 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 7(5)(c) (i) (amended by SI 1999/1023). For the meaning of 'the defendant' see para 1129 ante.

14 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 7(5)(c) (ii).

15 Ibid r 7(5)(c)(iii).

16 Ibid r 7(5)(c)(iv).

17 Ibid r 7(6). Where a hearing is partly heard and then adjourned for a year, a registrar would be expected to have sufficient recollection of the witnesses and evidence heard before the adjournment to be able fairly to balance that evidence against the evidence presented on the resumption of the hearing, such that the fairness

of the trial would not be affected: *Re Rocksteady Services Ltd, Secretary of State for Trade and Industry v Staton* [2001] 1 BCLC 84.

18 See the listing questionnaire in the form annexed to *Practice Direction--Directors Disqualification Proceedings*.

19 *Practice Direction--Directors Disqualification Proceedings* para 11.4. The trial date or period is fixed in accordance with CPR Pt 29 ('the multi-track': see CIVIL PROCEDURE vol 11 (2009) PARA 293 et seq).

20 See para 1134 ante.

21 In accordance with the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 6 (see para 1135 ante).

22 Ibid r 8(1) (amended by SI 1999/1023).

23 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 8(2) (amended by SI 1999/1023).

24 As to the Secretary of State see para 11 note 10 ante.

25 For the meaning of 'the official receiver' see para 1119 note 12 ante.

26 Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023, r 10.

27 *Re Tasbian Ltd (No 2)* [1990] BCC 322, CA; *Re Probe Data Systems Ltd (No 3)*, *Secretary of State for Trade and Industry v Desai* [1992] BCLC 405, CA; *Secretary of State for Trade and Industry v Langley* [1993] BCLC 1340. As to the basis on which the appellate court will interfere with the decision of the trial court see *Secretary of State for Trade and Industry v Gray* [1995] 1 BCLC 276, CA.

28 *Re Southbourne Sheet Metal Co Ltd* [1993] 1 WLR 244, [1993] BCLC 135, CA; *Re Godwin Warren Control Systems plc* [1993] BCLC 80; *Secretary of State for Trade and Industry v Worth* [1994] 2 BCLC 113, CA; *Secretary of State for Trade and Industry v Blake* [1997] 1 BCLC 728; *Re Sykes (Butchers) Ltd (in liquidation)*, *Secretary of State for Trade and Industry v Richardson* [1998] 1 BCLC 110; *Re Tech Textiles Ltd, Secretary of State for Trade and Industry v Vane* [1998] 1 BCLC 259. As to the costs of an application for leave under the Company Directors Disqualification Act 1986 s 17 (see para 1139 post) see *Secretary of State for Trade and Industry v Worth* supra; *Secretary of State for Trade and Industry v Collins* [2000] 2 BCLC 223, CA.

29 In relation to disqualification undertakings which may be accepted by the Secretary of State without the need for court proceedings see para 1108 ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(3) APPLICATION FOR DISQUALIFICATION/1137. Proceedings are civil not criminal.

1137. Proceedings are civil not criminal.

Director disqualification proceedings are civil regulatory proceedings and not criminal proceedings¹. The burden of proof is upon the Secretary of State to establish that the requirements of the Company Directors Disqualification Act 1986 are satisfied; and the appropriate standard of proof upon the Secretary of State² to establish those requirements is the balance of probabilities, notwithstanding the serious consequences of a disqualification order³.

¹ *Official Receiver v Stern* [2001] 1 All ER 633, [2000] 1 WLR 2230, CA. As to the bringing of disqualification proceedings and their conduct see para 1121 et seq ante.

² As to the Secretary of State see para 11 note 10 ante.

³ *Re Living Images Ltd* [1996] 1 BCLC 348; *Re Verby Print for Advertising Ltd, Fine v Secretary of State for Trade and Industry* [1998] 2 BCLC 23. In the absence of dishonesty, the burden is on the Secretary of State to satisfy the court that the conduct complained of is incompetence of a high degree: *Re Barings plc (No 5)*, *Secretary of State for Trade and Industry v Baker (No 5)* [1999] 1 BCLC 433; affd [2000] 1 BCLC 523, CA. As to the admissibility of evidence in disqualification proceedings see para 1145 post.

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1107-1145 Disqualification Orders and Undertakings

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(4) EFFECT OF DISQUALIFICATION ORDER OR DISQUALIFICATION UNDERTAKING

1138. Period of disqualification.

The fixing of the period of disqualification¹ is little different from any other sentencing exercise². The period of disqualification has been categorised in the follow manner:

- 1427 (1) the top bracket of disqualification for periods of 10 to 15 years, is reserved for particularly serious cases, such as where a director had previously been disqualified³;
- 1428 (2) the middle bracket of 6 to 10 years, is reserved for serious cases which do not merit the top bracket⁴; and
- 1429 (3) the bottom bracket of 2 to 5 years is applied where, although disqualification is mandatory, the conduct complained of is relatively not very serious⁵.

In determining the appropriate period of disqualification, the court should start with an assessment of the correct period to fit the gravity of the offence, bearing in mind that the period of disqualification has to contain deterrent elements, and then allow for mitigating factors, such factors not being restricted to the facts of the offence⁶.

¹ Ie under the Company Directors Disqualification Act 1986 s 6 (as amended) (see para 1121 ante). As to the period of disqualification to be imposed see also para 1107 note 2 ante.

² *Re Westmid Packing Services Ltd, Secretary of State for Trade and Industry v Griffiths* [1998] 2 All ER 124, [1998] 2 BCLC 646. See also *Re Sykes (Butchers) Ltd (in liquidation), Secretary of State for Trade and Industry v Richardson* [1998] 1 BCLC 110. In determining the appropriate period of disqualification, the court should start with a period fitting the gravity of the offence, and then consider any mitigating factors; and the likelihood of granting an application under the Company Directors Disqualification Act 1986 s 17 (see para 1139 post) is irrelevant: *Re Westmid Packing Services Ltd, Secretary of State for Trade and Industry v Griffiths* supra.

³ See eg *Official Receiver v Stern* [2001] EWCA Civ 1787, [2002] 1 BCLC 119.

⁴ See eg *Re JA Chapman & Co Ltd, Secretary of State for Trade and Industry v Amiss* [2003] EWHC 532 (Ch), [2003] 2 BCLC 206.

⁵ *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164 at 174, [1991] 3 All ER 578 at 581, CA, per Dillon LJ.

⁶ *Re Westmid Packing Services Ltd, Secretary of State for Trade and Industry v Griffiths* [1998] 2 All ER 124, [1998] 2 BCLC 646, CA (relevant matters included the director's general reputation and conduct in discharge of the office of director, his age and state of health, the length of time he had been in jeopardy, whether he had admitted the offence, his general conduct before and after the offence and periods of disqualification of any co-directors that might have been ordered by other courts). See *Re Bradcrown Ltd, Official Receiver v Ireland* [2001] 1 BCLC 547 (reliance on professional advisers rejected as a mitigating factor); *Secretary of State for Trade and Industry v Reynard* [2002] EWCA Civ 497, [2002] 2 BCLC 625 (cited in para 1121 note 9 ante). The likelihood of granting an application under the Company Directors Disqualification Act 1986 s 17 (see para 1139 post) is irrelevant to the determination of the period of disqualification and the fact that the court is minded to grant such leave is no reason for deciding to impose the minimum period of disqualification: *Re Westmid Packing Services Ltd, Secretary of State for Trade and Industry v Griffiths* supra. An appellate court may adjust a period of disqualification which has been imposed where it is satisfied that the period is too great to a

significant extent or where appropriate factors were not or could not have been taken into account: *Re Deaduck Ltd (in liquidation)*, *Baker v Secretary of State for Trade and Industry* [2000] 1 BCLC 148, [1999] All ER (D) 562. See also *Re Verby Print for Advertising Ltd*, *Fine v Secretary of State for Trade and Industry* [1998] 2 BCLC 23 (period of disqualification reduced to the minimum); *Re Migration Services International, Official Receiver v Webster* [2000] 1 BCLC 666 (judge had wrongly equated the position of two directors so one director had his period of disqualification reduced to the middle bracket from the upper bracket).

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1139. Application for leave under a disqualification order or disqualification undertaking.

As regards the court to which application must be made for leave under a disqualification order¹:

- 1430 (1) where a person is subject to a disqualification order made by a court having jurisdiction to wind up companies, any application for leave under that order² must be made to that court³; and
- 1431 (2) where a person is subject to a disqualification order made on conviction of an indictable offence⁴ by a court other than a court having jurisdiction to wind up companies, or a person is subject to a disqualification order made on summary conviction⁵, any application for leave⁶ must be made to any court which, when the order was made, had jurisdiction to wind up the company (or, if there is more than one such company, any of the companies) to which the offence (or any of the offences) in question related⁷.

As regards the court to which application must be made for leave under a disqualification undertaking⁸:

- 1432 (a) where a person is subject to a disqualification undertaking accepted at any time⁹, any application for leave¹⁰ must be made to any court to which, if the Secretary of State¹¹ had applied for a disqualification order at that time, his application could have been made¹²; and
- 1433 (b) where a person is subject to a disqualification undertaking accepted at any time under the Company Directors Disqualification Act 1986 in relation to breaches of competition law¹³, any application for leave allowed under those provisions¹⁴ must be made to the High Court¹⁵; but
- 1434 (c) where a person is subject to two or more disqualification orders or undertakings (or to one or more disqualification orders and to one or more disqualification undertakings) any application for leave¹⁶ must be made to any court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made¹⁷.

On the hearing of an application for leave¹⁸, the Secretary of State must appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses¹⁹. However, where the application for leave pertains to a disqualification order made in relation to breaches of competition law²⁰, and also where an application for leave is made by a person seeking to disapply one of the statutory prohibitions²¹, on the hearing of the application whichever of the Office of Fair Trading²² or a specified regulator²³ applied for the order or accepted the undertaking (as the case may be) must appear and draw the attention of the court to any matters which appear to it or him (as the case may be) to be relevant and may give evidence or call witnesses²⁴.

It is desirable that, if proceedings to disqualify a director are outstanding, and the director wishes to apply for leave to continue as a director notwithstanding any disqualification order, that application should be heard at the same time as the disqualification proceedings²⁵. Leave will be granted under a disqualification order only where the director shows that there is a need for such an order to be granted, and where the court can be satisfied that there is adequate protection for the public²⁶. When considering whether to grant leave, the court's discretion is unfettered by any consideration of the needs and interests of the applicant, either personal or business related²⁷, or by any statutory condition or criterion²⁸.

Where leave is granted, it may be subject to conditions or to suitable safeguards designed to protect the public²⁹.

It is open to the Secretary of State to appeal against any decision to grant leave where he considers that the court erred by so doing³⁰.

1 As to disqualification orders see para 1107 ante.

2 Ie for the purposes of the Company Directors Disqualification Act 1986 s 1(1)(a) (see para 1107 ante).

3 Ibid s 17(1) (s 17 substituted by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 12).

4 Ie under the Company Directors Disqualification Act 1986 s 2 (see para 1109 ante).

5 Ie under ibid s 5 (see para 1112 ante).

6 Ie for the purposes of ibid s 1(1)(a) (see para 1107 ante).

7 Ibid s 17(2) (as substituted: see note 3 supra).

8 As to disqualification undertakings see para 1108 ante.

9 Ie under the Company Directors Disqualification Act 1986 s 7 (see paras 1127-1128 ante) or s 8 (see para 1113 ante).

10 Ie for the purposes of ibid s 1A(1)(a) (as added) (see para 1108 ante).

11 As to the Secretary of State see para 11 note 10 ante.

12 Company Directors Disqualification Act 1986 s 17(3) (as substituted: see note 3 supra).

13 Ie under ibid s 9B (as added) (see para 1115 ante).

14 Ie for the purposes of ibid s 9B(4) (as added) (see para 1115 ante).

15 Ibid s 17(3A) (s 17 as substituted (see note 3 supra); and s 17(3A) added by Enterprise Act 2002 s 204(1), (8)).

16 Ie for the purposes of the Company Directors Disqualification Act 1986 s 1(1)(a), s 1(1A)(a) (as added) or s 9B(4) (as added).

17 Ibid s 17(4) (as substituted (see note 3 supra); and amended by the Enterprise Act 2002 s 204(1), (9)).

18 Ie for the purposes of the Company Directors Disqualification Act 1986 s 1(1)(a) or s 1(1A)(a) (as added).

19 Ibid s 17(5) (as substituted: see note 3 supra).

20 Ibid s 17(6) (s 17 as substituted (see note 3 supra); and s 17(6) added by Enterprise Act 2002 s 204(1), (10)). The application referred to in the text is an application made under the Company Directors Disqualification Act 1986 s 9B (as added) (see para 1115 ante).

21 The application referred to in the text is an application made under ibid s 9B(4) (as added), seeking to disapply a prohibition falling within s 9B(3)(a)-(c) (as added) (see para 1115 ante).

22 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

23 le a specified regulator within the meaning of the Company Directors Disqualification Act 1986 s 9E (as added) (see para 1114 ante).

24 Ibid s 17(7) (s 17 as substituted (see note 3 supra); and s 17(7) added by Enterprise Act 2002 s 204(1), (10)).

25 *Secretary of State for Trade and Industry v Worth* [1994] 2 BCLC 113, CA. The application ought to be supported by evidence of the role the applicant intends to play in the company and up to date information about the company: *Secretary of State for Trade and Industry v Collins* [2000] 2 BCLC 223, CA.

26 *Re Gibson Davies Ltd* [1995] BCC 11. The public for this purpose is defined widely: *Re Tech Textiles Ltd, Secretary of State for Trade and Industry v Vane* [1998] 1 BCLC 259 at 268 per Arden J (the public included all relevant interest groups, such as shareholders, employees, lenders, customers and other creditors). See also *Re Barings plc (No 3)*, *Secretary of State for Trade and Industry v Baker (No 3)* [1999] 1 All ER 1017, [2000] 1 WLR 634, sub nom *Re Barings plc (No 4)* [1999] 1 BCLC 262 (the court should, in particular, pay attention to the nature of the defects in company management that led to the disqualification order and ask itself whether, if leave were granted, a situation might arise in which there would be a risk of recurrence of those defects); *Re Britannia Homes Centres Ltd, Official Receiver v McCahill* [2001] 2 BCLC 63 (it would only be in the most extreme and unusual cases that a court would contemplate making an order that a disqualified director should be the sole proprietor and sole moving and controlling spirit of another company). Where a director appeals against a disqualification order and wishes to continue as a director pending the appeal, the correct method is normally to apply for leave under the Company Directors Disqualification Act 1986 s 17 (as substituted and amended), although the Court of Appeal has jurisdiction to grant a stay on the order in exceptional cases: *Secretary of State for Trade and Industry v Bannister* [1996] 1 All ER 993, [1995] BCC 1027, CA.

27 *Re Dawes & Henderson (Agencies) Ltd (No 2)*, *Shuttleworth v Secretary of State for Trade and Industry* [1999] 2 BCLC 317. See also *Secretary of State for Trade and Industry v Barnett* [1998] 2 BCLC 64 (the needs of a company run entirely by the director and his wife could not be distinguished from those of the claimant so the proper question to ask was whether it was necessary for the claimant to be director of a company in order to protect some legitimate interest of his own or that of any third party, and whether that need could be met without infringing the protection of the public); *Re Barings plc (No 3)*, *Secretary of State for Trade and Industry v Baker (No 3)* [1999] 1 All ER 1017, [2000] 1 WLR 634, sub nom *Re Barings plc (No 4)* [1999] 1 BCLC 262 (the fact that a need for the claimant to continue as director of the companies had not been established was not a sufficient reason for withholding the leave, which was granted subject to certain safeguards intended to ensure that he did not assume any substantive executive responsibilities); *Cunningham v Secretary of State for Trade and Industry* [2004] EWHC 760 (Ch).

28 *Re Dawes & Henderson (Agencies) Ltd (No 2)*, *Shuttleworth v Secretary of State for Trade and Industry* [1999] 2 BCLC 317.

29 See eg *Re Gibson Davies Ltd* [1995] BCC 11 at 17-18 per Sir Mervyn Davies; *Re Lo-Line Electric Motors Ltd* [1988] Ch 477, [1988] 2 All ER 692; *Re Chartmore Ltd* [1990] BCLC 673; *Re Tech Textiles Ltd, Secretary of State for Trade and Industry v Vane* [1998] 1 BCLC 259; *Re Dawes & Henderson (Agencies) Ltd (No 2)*, *Shuttleworth v Secretary of State for Trade and Industry* [1999] 2 BCLC 317; *Secretary of State for Trade and Industry v Collins* [2000] 2 BCLC 223, CA (great caution required because conditions difficult to police). A failure by a director to observe any terms imposed means that he is thereby not acting pursuant to the leave granted to him and is contravening the Company Directors Disqualification Act 1986, which renders him liable under ss 13, 15 to criminal penalties and personal liability for the company's debts (see paras 1142, 1144 post): *Re Brian Sheridan Cars Ltd, Official Receiver v Sheridan* [1996] 1 BCLC 327.

30 *Secretary of State for Trade and Industry v Collins* [2000] 2 BCLC 223, CA (per curiam).

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1139 Application for leave under a disqualification order or disqualification undertaking

NOTE 26--See also *Re Servacomm Redhall Ltd; Cunningham v Secretary of State for Trade and Industry* [2004] EWHC 760 (Ch), [2006] 1 BCLC 1.

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1140. Information to be provided to the Secretary of State in relation to disqualification orders and disqualification undertakings.

Where a disqualification order¹ or grant of leave² (as the case may be) is made by a court³, the specified officer of that court⁴ must furnish to the Secretary of State certain particulars in the specified form and manner⁵.

1 For these purposes, 'disqualification order' means an order of the court under any of the Company Directors Disqualification Act 1986 ss 2, 3-6, 8, 10 (s 2 as amended) (see para 1107 et seq ante): Companies (Disqualification Orders) Regulations 2001, SI 2001/967, reg 2.

2 For these purposes, 'grant of leave' means a grant by the court of leave under the Company Directors Disqualification Act 1986 s 17 (as substituted and amended) (see para 1139 ante) to any person in relation to a disqualification order or a disqualification undertaking: Companies (Disqualification Orders) Regulations 2001, SI 2001/967, reg 2. For these purposes, 'disqualification undertaking' means an undertaking accepted by the Secretary of State under the Company Directors Disqualification Act 1986 s 7 (see paras 1127-1128 ante) or s 8 (see para 1113 ante): Companies (Disqualification Orders) Regulations 2001, SI 2001/967, reg 2. As to the Secretary of State see para 11 note 10 ante.

3 See note 4 infra.

4 The specified officers of the specified courts are: (1) where a disqualification order is made by the Crown Court, the court manager; (2) where a disqualification order or grant of leave is made by the High Court, the court manager; (3) where a disqualification order or grant of leave is made by a county court, the Court Manager; (4) where a disqualification order is made by a magistrates' court, the chief executive to the justices; (5) where a disqualification order is made by the High Court of Justiciary, the deputy principal clerk of justiciary; (6) where a disqualification order or grant of leave is made by a sheriff court, the sheriff clerk; (7) where a disqualification order or grant of leave is made by the Court of Session, the deputy principal clerk of session; (8) where a disqualification order or grant of leave is made by the Court of Appeal, the court manager; and (9) where a disqualification order or grant of leave is made by the House of Lords, the judicial clerk: Companies (Disqualification Orders) Regulations 2001, SI 2001/967, reg 6(1).

Where a disqualification order is made by any of the courts mentioned in heads (1)-(9) supra or a disqualification undertaking has been accepted by the Secretary of State, and subsequently any action is taken by a court in consequence of which, as the case may be, that order or that undertaking is varied or ceases to be in force, the officer specified in heads (1)-(9) supra of the court which takes such action must furnish to the Secretary of State the particulars specified in reg 7(d) (see note 5 head (4) infra), in the form and manner there specified: reg 6(2).

5 Ibid reg 6(1). The form in which the particulars are to be furnished is:

- 85 (1) that set out in reg 7(a), Sch 1 (amended by SI 2002/1834) with such variations as circumstances require when the person against whom the disqualification order is made is an individual, and the particulars contained therein are the particulars specified for that purpose (Companies (Disqualification Orders) Regulations 2001, SI 2001/967, reg 7(a));
- 86 (2) that set out in reg 7(b), Sch 2 with such variations as circumstances require when the person against whom the disqualification order is made is a body corporate, and the particulars contained therein are the particulars specified for that purpose (reg 7(b));
- 87 (3) that set out in reg 7(c), Sch 3 with such variations as circumstances require when a grant of leave is made by the court, and the particulars contained therein are the particulars specified for that purpose (reg 7(c));

- 88 (4) that set out in reg 7(d), Sch 4 with such variations as circumstances require when any action is taken by a court in consequence of which a disqualification order or a disqualification undertaking is varied or ceases to be in force, and the particulars contained therein are the particulars specified for that purpose (reg 7(d)).

Either form contained in Sch 1 may be used in any circumstances but the form contained in Sch 1 as an alternative to form DO1 must be used where the director of a company or the member of a limited liability partnership in question is the beneficiary of a confidentiality order made under the Companies Act 1985 s 723B (as added): Companies (Disqualification Orders) (Amendment No 2) Regulations 2002, SI 2002/1834, reg 4.

The time within which a prescribed officer is to furnish the Secretary of State with such particulars is a period of 14 days beginning with the day on which the disqualification order or grant of leave is made, or any action is taken by a court in consequence of which the disqualification order or disqualification undertaking is varied or ceases to be in force, as the case may be: Companies (Disqualification Orders) Regulations 2001, SI 2001/967, reg 8.

The Companies (Disqualification Orders) Regulations 2001, SI 2001/967 (as amended) apply in relation to a disqualification order made after 6 April 2001 and a grant of leave made after that date, or any action taken by a court after that date in consequence of which a disqualification order or a disqualification undertaking is varied or ceases to be in force, whether the disqualification order or disqualification undertaking to which, as the case may be, the grant of leave or the action relates was made by the court or accepted by the Secretary of State before or after 6 April 2001: reg 4.

The regulations described above were made in pursuance of powers which provide that the Secretary of State may make regulations requiring officers of courts to furnish him with such particulars as the regulations may specify of cases in which:

- 89 (a) a disqualification order is made; or
- 90 (b) any action is taken by a court in consequence of which such an order or a disqualification undertaking is varied or ceases to be in force; or
- 91 (c) leave is granted by a court for a person subject to such an order to do anything which otherwise the order prohibits him from doing; or
- 92 (d) leave is granted by a court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits him from doing,

and the regulations may specify the time within which, and the form and manner in which, such particulars are to be furnished: Company Directors Disqualification Act 1986 s 18(1) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 13(1), (2)(a), (b)). Regulations under the Company Directors Disqualification Act 1986 s 18 (as amended) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 18(5). Regulations under s 18 (as amended) may extend s 18(1)-(4) (as amended) (see further para 1141 post), to such extent and with such modifications as may be specified in the regulations, to disqualification orders made under the Companies (Northern Ireland) Order 1989, SI 1989/2404, Pt II: Company Directors Disqualification Act 1986 s 18(4A) (added by the Insolvency Act 2000 Sch 4 Pt I paras 1, 13(1), (5)). See also the Company Directors Disqualification Act 1986 s 12A (added by the Insolvency Act 2000 s 7(1)); and the Companies (Disqualification Orders) Regulations 2001, SI 2001/967, regs 5, 9 (reg 9 amended by SI 2004/1940). In relation to disqualification undertakings under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, see the Company Directors Disqualification Act 1986 s 18(4A) (added by the Insolvency Act 2000 s 8, Sch 4 paras 1, 13(1), (5); and amended by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(1), (6)). As to the company law of Northern Ireland generally see COMPANIES.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1140 Information to be provided to the Secretary of State in relation to disqualification orders and disqualification undertakings

NOTE 5--Company Directors Disqualification Act 1986 ss 12A, 18(4A) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(4) EFFECT OF DISQUALIFICATION ORDER OR DISQUALIFICATION UNDERTAKING/1141. Register of disqualification orders and disqualification undertakings.

1141. Register of disqualification orders and disqualification undertakings.

The Secretary of State¹ must, from the particulars furnished² in accordance with the statutory provisions³, continue to maintain the register of orders⁴ and of cases in which leave has been granted⁵. When an order or undertaking of which entry is made in the register ceases to be in force, the Secretary of State must delete the entry from the register and all particulars relating to it which have been furnished to him under these provisions or any previous corresponding provision and, in the case of a disqualification undertaking, any other particulars he has included in the register⁶.

The register must be open to inspection on payment of such fee as may be specified by the Secretary of State⁷.

1 As to the Secretary of State see para 11 note 10 ante.

2 Ie pursuant to the Company Directors Disqualification Act 1986 s 18(1) and the regulations made thereunder (see para 1140 ante).

3 See note 2 supra.

4 Ie the register of orders set up by the Secretary of State under the Companies Act 1976 s 29 (repealed) and continued under the Companies Act 1985 s 301 (repealed). The Secretary of State must include in the register such particulars as he considers appropriate of: (1) disqualification undertakings accepted by him under the Company Directors Disqualification Act 1986 s 7 (see paras 1125, 1127-1128 ante) or s 8 (see para 1113 ante); (2) disqualification undertakings accepted by the Office of Fair Trading or a specified regulator under s 9B (as added) (see para 1115 ante); and (3) cases in which leave has been granted (see para 1139 ante): s 18(2A) (added by the Enterprise Act 2002 s 204(1), (11)). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq. As to specified regulators see para 1114 note 11 ante.

5 Company Directors Disqualification Act 1986 s 18(2).

6 Ibid s 18(3) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 13(4)).

7 Company Directors Disqualification Act 1986 s 18(4). No fee is payable for inspecting the register.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1141 Register of disqualification orders and disqualification undertakings

NOTE 5--Company Directors Disqualification Act 1986 s 18(2) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(4) EFFECT OF DISQUALIFICATION ORDER OR DISQUALIFICATION UNDERTAKING/1142. Consequences of contravention of disqualification order or disqualification undertaking; criminal penalties.

1142. Consequences of contravention of disqualification order or disqualification undertaking; criminal penalties.

If a person acts in contravention of a disqualification order¹ or disqualification undertaking², or in contravention of an order made following his failure to pay under a county court administration order³, or is guilty of an offence under the provisions relating to undischarged bankrupts⁴, he is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both⁵.

1 See para 1107 ante.

2 See para 1108 ante.

3 I.e. under the Company Directors Disqualification Act 1986 s 12(2) (see para 1120 ante). These provisions apply also to contraventions of s 12A (as added) (Northern Irish disqualification orders: see para 1140 note 5 ante) except in relation to a person subject to a disqualification order under the Companies (Northern Ireland) Order 1989, SI 1989/2404, Pt II made before 2 April 2001, and to contraventions of the Company Directors Disqualification Act 1986 s 12B (as added) (Northern Irish disqualification undertakings) except in relation to a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, accepted before 1 September 2004: Company Directors Disqualification Act 1986 s 13(1) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 8(a), (b); and by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(1), (3)). As to the company law of Northern Ireland generally see COMPANIES.

4 I.e. the Company Directors Disqualification Act 1986 s 11 (see para 1119 ante).

5 Ibid s 13 (as amended: see note 3 supra). As to the statutory maximum see para 10 note 1 ante.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(4) EFFECT OF DISQUALIFICATION ORDER OR DISQUALIFICATION UNDERTAKING/1143. Offences by body corporate; disqualification orders or disqualification undertakings.

1143. Offences by body corporate; disqualification orders or disqualification undertakings.

Where a body corporate¹ is guilty of an offence of acting in contravention of a disqualification order or disqualification undertaking², and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly³.

Where the affairs of a body corporate are managed by its members, these provisions apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate⁴.

1 A body corporate does not include a corporation sole, but includes a company incorporated elsewhere than in Great Britain: Companies Act 1985 s 740; applied by the Company Directors Disqualification Act 1986 s 22(1), (6).

2 See para 1142 ante. These provisions apply also to contraventions of *ibid* s 12A (as added) (Northern Irish disqualification orders: see para 1140 note 5 ante) except in relation to a person subject to a disqualification order under the Companies (Northern Ireland) Order 1989, SI 1989/2404, Pt II made before 2 April 2001, and to contraventions of the Company Directors Disqualification Act 1986 s 12B (as added) (Northern Irish disqualification undertakings) except in relation to a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, accepted before 1 September 2004: Company Directors Disqualification Act 1986 s 14(1) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 9; and by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(1), (4)). As to the company law of Northern Ireland generally see COMPANIES.

3 Company Directors Disqualification Act 1986 s 14(1) (as amended: see note 2 supra). As to the penalties see para 1142 ante.

4 *Ibid* s 14(2).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(4) EFFECT OF DISQUALIFICATION ORDER OR DISQUALIFICATION UNDERTAKING/1144. Consequences of contravention; personal liability of persons acting while disqualified.

1144. Consequences of contravention; personal liability of persons acting while disqualified.

A person is personally responsible for all the relevant debts¹ of a company² if at any time:

1435 (1) in contravention of a disqualification order³ or disqualification undertaking⁴, or of the provisions relating to undischarged bankrupts⁵, he is involved in the management of a company⁶; or

1436 (2) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order or disqualification undertaking or to be an undischarged bankrupt⁷.

Where a person is personally responsible under these provisions for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under these provisions or otherwise, is so liable⁸.

1 For these purposes, the relevant debts of a company are: (1) in relation to a person who is personally responsible under the Company Directors Disqualification Act 1986 s 15(1)(a) (see head (1) in the text), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and (2) in relation to a person who is personally responsible under s 15(1)(b) (see head (2) in the text), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in s 15(1)(b): s 15(3).

2 For the meaning of 'company' for these purposes see para 1107 note 4 ante.

3 See para 1107 ante.

4 See para 1108 ante.

5 In the Company Directors Disqualification Act 1986 s 11 (see para 1119 ante). These provisions apply also to contraventions of s 12A (as added) (Northern Irish disqualification orders: see para 1140 note 5 ante) except in relation to a person subject to a disqualification order under the Companies (Northern Ireland) Order 1989, SI 1989/2404, Pt II made before 2 April 2001, and to contraventions of the Company Directors Disqualification Act 1986 s 12B (as added) (Northern Irish disqualification undertakings) except in relation to a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150, accepted before 1 September 2004: Company Directors Disqualification Act 1986 s 15(1)(a) (amended by the Insolvency Act 2000 s 8, Sch 4 Pt I paras 1, 10(1), (2)(a); and by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(1), (5)(a)(i)). As to the company law of Northern Ireland generally see COMPANIES.

6 Company Directors Disqualification Act 1986 s 15(1)(a) (as amended: see note 5 supra). For these purposes, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part in the management of the company: s 15(4). See also note 5 supra. As to 'management' of a company see para 1107 note 7 ante.

7 Ibid s 15(1)(b) (amended by the Insolvency Act 2000 Sch 4 Pt I paras 1, 10(1), (2)(b); and by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 2(5)(a)(ii)). For these purposes, a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order or disqualification undertaking or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions

given by that person: Company Directors Disqualification Act 1986 s 15(5) (amended by the Insolvency Act 2000 Sch 4 Pt I paras 1, 10(1), (3); and by the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941 art 2(5)(b)). See also note 5 supra.

8 Company Directors Disqualification Act 1986 s 15(2).

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1144 Consequences of contravention; personal liability of persons acting while disqualified

TEXT AND NOTES 1-7--Company Directors Disqualification Act 1986 s 15(1)(b) substituted: SI 2009/1941.

NOTE 7--Company Directors Disqualification Act 1986 s 15(5) substituted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/11. DISQUALIFICATION ORDERS AND UNDERTAKINGS/(4) EFFECT OF DISQUALIFICATION ORDER OR DISQUALIFICATION UNDERTAKING/1145. Admissibility in evidence of statements.

1145. Admissibility in evidence of statements.

In any proceedings, whether or not under the Company Directors Disqualification Act 1986, any statement made in pursuance of a requirement imposed by or under the provisions of that Act¹, or by or under rules made for the purposes of that Act under the Insolvency Act 1986², may be used in evidence against any person making or concurring in making that statement³.

However, in criminal proceedings in which any such person is charged with an offence⁴, no evidence relating to the statement may be adduced and no question relating to it may be asked, by or on behalf of the prosecution⁵, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person⁶.

1 In the Company Directors Disqualification Act 1986 s 6 (as amended) (see para 1121 ante), s 7 (see paras 1125, 1127-1128 ante), s 8 (see para 1113 ante), s 9 (see paras 1122-1123 ante), s 10 (see para 1118 ante), s 15 (see para 1144 ante), s 19(c) (which relates to precluding any applications for a disqualification order under s 6 (as amended) or s 8 where the relevant company went into liquidation before 28 April 1986: see paras 1113, 1121 ante), and Sch 1 (see paras 1122-1123 ante).

2 See the Insolvency Act 1986 s 411; and para 1041 ante. Evidence obtained by the official receiver by legal compulsion under the Insolvency Act 1986 s 235 (see para 678 post) is admissible in disqualification proceedings: *Official Receiver v Stern* [2001] 1 All ER 633, [2000] 1 WLR 2230, CA. See also para 1123, 1127 ante. For the meaning of 'the official receiver' see para 1119 note 12 ante.

3 Company Directors Disqualification Act 1986 s 20(1) (renumbered by the Youth Justice and Criminal Evidence Act 1999 s 59, Sch 3 para 8(1), (2)). But see *Secretary of State for Trade and Industry v Bairstow* [2003] EWCA Civ 321, [2004] Ch 1, [2003] 1 BCLC 696 (factual findings and conclusions of the judge in wrongful dismissal proceedings were not admissible in disqualification proceedings as evidence of the facts so found).

4 In an offence to which the Company Directors Disqualification Act 1986 s 20 (as amended) applies, being any offence other than: (1) an offence which is created by rules made under the Insolvency Act for the purposes of the Company Directors Disqualification Act 1986, and designated for the purposes of s 20(3) by such rules or by regulations made by the Secretary of State; (2) an offence which is created by regulations made under any such rules, and designated for the purposes of s 20(3) by such regulations; or (3) an offence under the Perjury Act 1911 s 5 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 716-717): Company Directors Disqualification Act 1986 s 20(3) (added by the Youth Justice and Criminal Evidence Act 1999 Sch 3 para 8(1), (3)). Regulations under head (1) supra must be made by statutory instrument and, after being made, must be laid before each House of Parliament: Company Directors Disqualification Act 1986 s 20(4) (added by the Youth Justice and Criminal Evidence Act 1999 Sch 3 para 8(1), (3)).

5 Although the Company Directors Disqualification Act 1986 s 20(2) (as added) precludes only the use of statements made in disqualification proceedings 'by or on behalf of the prosecution', the responsibility for doing justice in criminal proceedings lies primarily with the criminal court: *Secretary of State for Trade and Industry v Crane* [2001] 2 BCLC 222.

6 Company Directors Disqualification Act 1986 s 20(2) (added by the Youth Justice and Criminal Evidence Act 1999 Sch 3 para 8(1), (3)). The amendment was made to this provision as a consequence of the decision in *Saunders v United Kingdom (Application 19187/91)* (1996) 23 EHRR 313, ECtHR (evidence disclosed by applicant when questioned under compulsory powers not admissible in criminal proceedings). However, the prohibition on the use of such evidence does not extend to disqualification proceedings: *EDC v United Kingdom (Application 24433/94)* [1998] BCC 370, EComHR; *R v Secretary of State for Trade and Industry, ex p McCormick* [1998] BCC 379; *DC, HS and AD v United Kingdom (Application 39031/97)* [2000] BCC 710, ECtHR. The issue of whether the conduct of disqualification proceedings has infringed a director's right to a fair trial as it is guaranteed under the Human Rights Act 1998 must be considered by the trial judge on the basis of all relevant factors including the degrees of coercion involved: *R v Secretary of State for Trade and Industry, ex p McCormick* supra; *WGS and MSLS v UK (Application 38172/97)* [2000] BCC 719, ECtHR; *Official Receiver v Stern*

[2001] 1 All ER 633, [2000] 1 WLR 2230, CA. As to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (right to a fair trial), which is incorporated into English law by the Human Rights Act 1998, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134. There is nothing in the general law or in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6 which makes it objectionable for a prosecuting authority to obtain helpful ideas from what was said in other proceedings concerning the same subject matter: *Secretary of State for Trade and Industry v Crane* [2001] 2 BCLC 222. As to the admissibility of evidence in proceedings relating to the affairs of a company see COMPANIES; as to admissibility generally see CIVIL PROCEDURE vol 11 (2009) PARAS 758-765; and as to evidence in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1359 et seq.

UPDATE

1107-1145 Disqualification Orders and Undertakings

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1145 Admissibility in evidence of statements[; legal professional privilege]

TEXT AND NOTES--In proceedings against a person for an offence under the Company Directors Disqualification Act 1986 nothing in that Act is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege: s 20A (added by SI 2008/948).

TEXT AND NOTES 1-3--Company Directors Disqualification Act 1986 s 20(1) amended: SI 2009/1941.

NOTE 4--Company Directors Disqualification Act 1986 s 20(3) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/12. COMPANIES REGULATED BY THE COMPANIES CLAUSES ACTS/1146. In general.

12. COMPANIES REGULATED BY THE COMPANIES CLAUSES ACTS

1146. In general.

Any company incorporated by special Act for carrying on public works may be wound up by the court under the Insolvency Act 1986 as an unregistered company¹. No unregistered company may be wound up voluntarily under the Insolvency Act 1986, except in accordance with the European Regulation on Insolvency Proceedings².

1 See the Insolvency Act 1986 s 221 (as amended); note 2 infra; and para 1148 et seq post. A mortgagee or bondholder may present a petition if he has obtained a judgment: see para 450 et seq ante. As to others who may present a petition see paras 450-452 ante; and see also *Re Milford Docks Co, Lister's Petition* (1883) 23 ChD 292. A landowner whose land has been taken and whose purchase and compensation money has been assessed under the Lands Clauses Consolidation Act 1845 (see COMPULSORY ACQUISITION OF LAND), but whose title has not been investigated or accepted by the company, is not a creditor who may petition: *Re Milford Docks Co, Lister's Petition* supra.

Prior to 1 January 1993, a railway company incorporated by Act of Parliament could not be wound as an unregistered company: see the Insolvency Act 1986 s 220(1)(a) (repealed as from 1 January 1993 by the Transport and Works Act 1992 ss 65(1)(f), 68(1), Sch 4 Pt I).

2 Insolvency Act 1986 s 221(4) (amended by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 9). As to the European Regulation on Insolvency Proceedings (ie EC Council Regulation 1346/2000 (OJ L 160, 30.6.2000, p 1)) see para 46 et seq ante.

UPDATE

1146 In general

NOTE 1--Insolvency Act 1986 s 220 substituted: see PARA 1147.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1147. Meaning of 'unregistered company'.

13. UNREGISTERED AND UNINCORPORATED COMPANIES

1147. Meaning of 'unregistered company'.

For the purposes of Part V of the Insolvency Act 1986¹ relating to the winding up of unregistered companies², 'unregistered company' includes any association and any company except a company registered in any part of the United Kingdom³ under the Joint Stock Companies Acts⁴ or under the legislation, past or present, relating to companies in Great Britain⁵.

Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under the Insolvency Act 1986, notwithstanding that it has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated⁶. The power to wind up such dissolved overseas companies is subject to the European Regulation on Insolvency Proceedings⁷.

1 In the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1148 et seq post.

2 For the meaning of 'unregistered company' under the Companies Act 1985 see COMPANIES vol 15 (2009) PARA 1665.

3 For the meaning of 'United Kingdom' see para 12 note 2 ante.

4 For the meaning of 'Joint Stock Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

5 Insolvency Act 1986 s 220(1) (amended by the Transport and Works Act 1992 ss 65(1)(f), 68(1), Sch 4 Pt I; and by virtue of the Insolvency Act 1986 s 220(2)). The other Acts referred to are the Companies Act 1862; the Companies (Consolidation) Act 1908; the Companies Act 1929; the Companies Acts 1948-1983; and the Companies Act 1985. As to the power to wind up companies registered under those Acts see para 435 ante; and as to the winding up of railway companies incorporated by Act of Parliament see para 1146 note 1 ante. As to the bodies which may be wound up as unregistered companies see further para 1149 post; as to the power to wind up a foreign company see paras 1157-1160 post; and as to the power to wind up incorporated building societies and registered industrial and provident societies see paras 435- 436 ante. For the meaning of 'Great Britain' see para 12 note 2 ante.

Certified trustee savings banks were formerly included in the meaning of 'unregistered company': see the Insolvency Act 1986 s 220(1), (2); the Trustee Savings Banks Act 1985 (Appointed Day) (No 4) Order 1986, SI 1986/1223; and the Trustee Savings Banks Act 1985 (Appointed Day) (No 6) Order 1988, SI 1988/1168.

6 Insolvency Act 1986 s 225(1) (amended by virtue of the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 10).

7 Insolvency Act 1986 s 225(2) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 10). As to the European Regulation on Insolvency Proceedings (EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1)) see para 46 et seq ante.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1147 Meaning of 'unregistered company'

TEXT AND NOTES 1-5--For the purposes of the Insolvency Act 1986 Pt V (ss 73-229) 'unregistered company' includes any association and any company, with the exception of a company registered under the Companies Act 2006 in any part of the United Kingdom: Insolvency Act 1986 s 220 (substituted by SI 2009/1941). See *HSBC, Petitioner* [2009] CSOH 147, 2010 SLT 281 (company registered in Gibraltar with its principal place of business in Scotland was an 'unregistered company').

NOTES 6, 7--Insolvency Act 1986 s 225 amended: SI 2009/1841.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1148. Application of winding-up provisions.

1148. Application of winding-up provisions.

When a company is wound up as an unregistered company, all the provisions of the Insolvency Act 1986 with respect to winding up, with certain exceptions and additions¹, apply² and no unregistered company may be wound up under the Act voluntarily except in accordance with the European Regulation on Insolvency Proceedings³.

The provisions of Part V of the Insolvency Act 1986⁴ with respect to winding up unregistered companies are in addition to, and not in restriction of, any other provisions in Part IV of that Act⁵ with respect to winding up companies by the court; and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under the Companies Act 1985⁶. Except in the event of its being wound up⁷, an unregistered company is not, however, deemed to be a company under the Companies Act 1985, and then only to the extent provided by the winding-up provisions relating to unregistered companies⁸.

1 See paras 1149-1155 post. As to the winding up of European Economic Interest Groupings see para 1165 post.

2 Insolvency Act 1986 s 221(1). See *Re Muggeridge, Muggeridge v Sharp, ex p Bank of London and National Provincial Insurance Association* (1870) LR 10 Eq 443; *Re Adams ex p Ball* (1874) 10 Ch App 48; *Re Hibernian Merchants Ltd* [1958] Ch 76, [1957] 3 All ER 97. As to service of the petition see para 461 ante; and see also *Re City of London and Colonial Financial Association Ltd* (1867) 36 LJ Ch 832.

3 Insolvency Act 1986 s 221(4) (amended by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 9). As to the European Regulation on Insolvency Proceedings (ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1)) see para 46 et seq ante.

4 Ie the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

5 Ie ibid Pt IV (ss 73-219) (as amended): see para 433 et seq ante.

6 Ibid s 229(1). In the winding up of an unregistered company, the court may make an order under s 167, Sch 4 Pt II para 4 (see para 578 ante) authorising the liquidator to bring a claim: *Russian and English Bank and Florence Montefiore Guedalla v Baring Bros & Co Ltd* [1936] AC 405, [1936] 1 All ER 505, HL; and see para 1157 post.

7 'In the event of its being wound up' does not mean in the event of its having been wound up; and therefore the court has power, in the case of an unregistered company as in the case of a registered company, to stay and restrain proceedings at any time after the presentation of a winding-up petition: *Rudow v Great Britain Mutual Life Assurance Society* (1881) 17 ChD 600 at 612, CA.

8 Insolvency Act 1986 s 229(2); and see *Re Adams, ex p Ball* (1874) 10 Ch App 48. Nothing in the Companies Act 1985, the insider dealing legislation, the Business Names Act 1985 or the Companies Consolidation (Consequential Provisions) Act 1985 affects the operation of any enactment providing for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company under any of the former Companies Acts: Companies Consolidation (Consequential Provisions) Act 1985 s 31(1), (8)(c) (amended by the Criminal Justice Act 1993 s 79(13), Sch 5 para 4(2)). For the meaning of 'the former Companies Acts' see COMPANIES vol 14 (2009) PARA 14.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1148 Application of winding-up provisions

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--Insolvency Act 1986 s 221(1) amended: SI 2009/1941.

TEXT AND NOTES 4-6--Insolvency Act 1986 s 229(1) amended: SI 2009/1941.

TEXT AND NOTES 7, 8--Insolvency Act 1986 s 229(2) omitted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1149. Companies which may be wound up.

1149. Companies which may be wound up.

The following may be wound up as unregistered companies¹ if they are not illegal companies²:

- 1437 (1) a company unregistered at the date of the presentation of the petition, even though afterwards registered³;
- 1438 (2) a company incorporated by royal charter⁴;
- 1439 (3) a company provisionally registered under the 1844 Act relating to joint stock companies⁵, but not completely registered under that Act⁶;
- 1440 (4) a friendly society, whether registered under the Friendly Societies Acts⁷ or unregistered⁸;
- 1441 (5) a loan society⁹;
- 1442 (6) a railway company incorporated by Act of Parliament¹⁰;
- 1443 (7) a dock company incorporated by special Act, even though it has power to make and work a branch railway for the purposes of its docks¹¹;
- 1444 (8) a tramway company incorporated by special Act¹²;
- 1445 (9) an incorporated canal company¹³;
- 1446 (10) an incorporated ferry company¹⁴;
- 1447 (11) an incorporated telegraph company¹⁵;
- 1448 (12) a company which has been dissolved under its deed of settlement, the assets having been transferred to another company¹⁶;
- 1449 (13) an investment company with variable capital¹⁷; and
- 1450 (14) a European Economic Interest Grouping¹⁸.

¹ For the statutory definition of 'unregistered company' see para 1147 ante; and COMPANIES vol 15 (2009) PARA 1665.

² See para 1157 post; and COMPANIES vol 14 (2009) PARA 106.

³ *Re Hercules Insurance Co* (1871) LR 11 Eq 321.

⁴ *Re Oriental Bank Corpn* (1885) 54 LJ Ch 481, CA; *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch 385 at 405, CA.

⁵ *le 7 & 8 Vict c 110*. This Act is not among the Acts included in the expression 'the Joint Stock Companies Acts': see COMPANIES vol 14 (2009) PARA 14. As to the effect of registration under the Joint Stock Companies Acts see para 1147 text and notes 3, 4 ante.

⁶ *Re Bank of London and National Provincial Insurance Association* (1871) 6 Ch App 421; cf *Womersley v Merritt* (1867) LR 4 Eq 695.

⁷ *Re Alfreton District Friendly and Provident Society* (1863) 7 LT 817; *Re Independent Protestant Loan Fund Society, ex p Morton* [1895] 1 IR 1; *Re Twentieth Century Equitable Friendly Society* [1910] WN 236. Before the enactment of the Companies Act 1929 (repealed), if a friendly society had no share capital, the jurisdiction was in the High Court and not in the county court: *Re Ironfounders' (Bradford Branch) Social Club and Institute* (1923) 67 Sol Jo 516. The High Court now has jurisdiction to wind up all companies: see para 439 ante. As to the power of the Friendly Societies Commission to apply for the winding up of a registered friendly society see the Friendly Societies Act 1974 s 87 (as substituted and amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2354. As to the winding up of incorporated friendly societies see the Friendly Societies Act 1992 ss 19-26 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2143 et seq. It is no longer possible to register a society under the Friendly Societies Acts: see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2149 et seq.

8 *Re Victoria Society, Knottingley* [1913] 1 Ch 167; *Re Osmondthorpe Hall Freehold Garden and Building Allotment Society* (1913) 58 Sol Jo 13; *Re Lead Co's Workmen's Fund Society, Lowes v Governor & Co for Smelting Down Lead with Pit and Sea Coal* [1904] 2 Ch 196. The fact that a society is in course of dissolution does not prevent a creditor from obtaining a winding-up order: *Re Irish Mercantile Loan Society* [1907] 1 IR 98. Members who have given notice of withdrawal of deposits are not entitled to a winding-up order ex debito justitiae: *Re Independent Protestant Loan Fund Society, ex p Morton* [1895] 1 IR 1. As to the priority of such notices in a winding up see *Re United Citizens Investment Trust Ltd* [1932] 1 Ch 395, CA.

9 See *Re Sherwood Loan Co, ex p Smith* (1851) 1 Sim NS 165.

10 As to railway companies incorporated by Act of Parliament see para 1146 note 1 ante.

11 *Re Exmouth Docks Co* (1873) LR 17 Eq 181.

12 *Re Brentford and Isleworth Tramways Co* (1884) 26 ChD 527; *Re Portstewart Tram Co, ex p O' Neill* [1896] 1 IR 265; *Marshall v South Staffordshire Tramways Co* [1895] 2 Ch 36 at 52, CA. The fact that a receiver has been appointed at the instance of a debenture holder does not preclude the debenture holder from petitioning: *Re Portsmouth Borough (Kingston, Fratton and Southsea) Tramways Co* [1892] 2 Ch 362 (overruling *Re Herne Bay Waterworks Co* (1878) 10 ChD 42 at 47).

13 *Re Basingstoke Canal Proprietors* (1866) 14 WR 956; *Re Wey and Arun Junction Canal Co* (1867) LR 4 Eq 197. This is so even if it is necessary to apply to Parliament for a sale: *Re Bradford Navigation Co* (1870) LR 10 Eq 331; affd (1870) 5 Ch App 600.

14 *Re Isle of Wight Ferry Co* (1865) 2 Hem & M 597.

15 *Re Electric Telegraph of Ireland* (1856) 22 Beav 471.

16 *Re Family Endowment Society* (1870) 5 Ch App 118.

17 See under the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (see para 1147 et seq ante), as modified by the Open-Ended Investment Companies Regulations 2001, SI 2001/1228 (as amended).

18 See para 1165 post.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1150. Companies which may not be wound up.

1150. Companies which may not be wound up.

There is no jurisdiction to wind up an international organisation established by treaty between sovereign states¹.

An illegal company may not be wound up as an unregistered company², nor may an abortive company which was not in fact formed³, nor a company which is not a trading company, such as a literary institution⁴ or an unincorporated members' club⁵, nor a benevolent society where there is no contractual relation between the members among themselves⁶, nor a statutory corporation⁷.

If an unregistered company has a principal place of business situated in Northern Ireland, it may not be wound up⁸ unless it has a principal place of business situated in England and Wales or Scotland or in both England and Wales and Scotland⁹. For the purpose of determining a court's winding-up jurisdiction, an unregistered company is deemed to be registered in England and Wales or Scotland, according as its principal place of business is situated in England and Wales or Scotland, or, if it has a principal place of business situated in both countries, it is deemed to be registered in both countries; and the principal place of business situated in that part of Great Britain in which proceedings are being instituted is, for all purposes of the winding up, deemed to be the registered office of the company¹⁰.

The court's jurisdiction in relation to the winding up of companies outside England and Wales is now subject to the European Regulation on Insolvency Proceedings¹¹.

A court in the United Kingdom may not in general make a winding up order¹² in relation to an EEA insurer¹³ or any of its branches or in relation to an EEA credit institution¹⁴ or any of its branches¹⁵.

1 *Re International Tin Council* [1987] Ch 419, [1987] 1 All ER 890; affd [1989] Ch 309, [1988] 3 All ER 257, CA.

2 See COMPANIES vol 14 (2009) PARA 108.

3 *Re Imperial Anglo-German Bank* (1872) 26 LT 229.

4 *Re Bristol Athenaeum* (1889) 43 ChD 236; and see *Re Russell Institution, Figgins v Baghino* [1898] 2 Ch 72 at 79; *Re Jones, Clegg v Ellison* [1898] 2 Ch 83 at 91.

5 *Re St James's Club* (1852) 2 De GM & G 383; *Re Witney Town Football and Social Club* [1994] 2 BCLC 487, [1993] BCC 874; and see CLUBS vol 13 (2009) PARA 205.

6 *Re Caledonian Employees' Benevolent Society* 1928 SC 633.

7 See *Tamlin v Hannaford* [1950] 1 KB 18 at 23, [1949] 2 All ER 327 at 328, CA. Cf *Re Salvage Association* [2003] EWHC 1028 (Ch), [2003] 3 All ER 246, [2004] 1 WLR 174, in which as a result of the European Regulation on Insolvency Proceedings (see note 11 *infra*), the court made an administration order in respect of an association of members incorporated by royal charter.

8 *Ie* under the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 *et seq ante*.

9 *Ibid* s 221(2). See *Re a Company (No 007946 of 1993)* [1994] Ch 198, [1994] 1 All ER 1007.

10 Insolvency Act 1986 s 221(3).

11 le EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1)) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

12 le under the Insolvency Act 1986 s 221 (see para 1148 et seq ante).

13 le as defined in the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 2(1).

14 le as defined in the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 2(1).

15 Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, reg 4(1)(a), (2); Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 3(1)(a), (2). Those regulations modify the law of insolvency in connection with insurers and credit institutions pursuant to EC Council Directive 2001/17 (OJ L110, 20.4.2001, p 28) on the reorganisation and winding up of insurance undertakings and EC Council Directive 2001/24 (OJ L125, 5.5.2001, p 15) on the reorganisation and winding up of credit institutions.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1150 Companies which may not be wound up

TEXT AND NOTE 14--Definition amended: SI 2006/3221.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1151. Grounds for winding up an unregistered company.

1151. Grounds for winding up an unregistered company.

An unregistered company may be wound up by the court:

- 1451 (1) if the company is dissolved¹, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs²;
- 1452 (2) if the company is unable to pay its debts³;
- 1453 (3) if the court is of opinion that it is just and equitable⁴ that the company should be wound up⁵.

1 'Is dissolved' means 'has been dissolved': *Re Russian and English Bank* [1932] 1 Ch 663; followed in *Re Russian Bank for Foreign Trade* [1933] Ch 745.

2 Insolvency Act 1986 s 221(5)(a). See *Re Family Endowment Society* (1870) 5 Ch App 118 at 129. A winding-up order may be made, although the petitioner's debt is in dispute and jurisdiction is not affected by the fact that a foreign government might establish a claim to the assets: *Re Russian Bank for Foreign Trade* [1933] Ch 745. As to the power to wind up a foreign company which has been dissolved see para 1157 et seq post. Service of the petition to wind up the company must be effected under the Insolvency Rules 1986, SI 1986/1925, r 4.8 (as amended) (see para 461 ante): *Re Tea Trading Co, K and C Popoff Bros* [1933] Ch 647. As to the power to wind up a foreign company generally see para 1157 et seq post.

3 Insolvency Act 1986 s 221(5)(b). As to when a company is unable to pay its debts see para 1152 post.

4 For the meaning of 'just and equitable' see paras 448-449 ante.

5 Insolvency Act 1986 s 221(5)(c). Cf the grounds on which an unregistered friendly society or benevolent fund will be regarded as terminated: see *Re William Denby & Sons Ltd Sick and Benevolent Fund, Rowling v Wilks* [1971] 2 All ER 1196 at 1201-1202, [1971] 1 WLR 973 at 978-979 per Brightman J; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2103.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1152. When a company is deemed to be unable to pay its debts.

1152. When a company is deemed to be unable to pay its debts.

An unregistered company is deemed to be unable to pay its debts¹:

- 1454 (1) if a creditor² by assignment or otherwise, to whom the company is indebted in a sum exceeding £750³ then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a written demand in the prescribed form⁴ requiring the company to pay the sum due⁵, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the creditor's satisfaction⁶;
- 1455 (2) if proceedings have been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the proceedings has been served on the company in one of the modes mentioned above⁷, and the company has not within three weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the proceedings to be stayed, or indemnified the defendant to his reasonable satisfaction against the proceedings, and against all costs, damages and expenses to be incurred by him because of them⁸;
- 1456 (3) if in England and Wales execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied⁹;
- 1457 (4) if in Scotland the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made¹⁰;
- 1458 (5) if in Northern Ireland a certificate of unenforceability has been granted in respect of any judgment decree or order obtained as mentioned in head (3) above¹¹;
- 1459 (6) if it is otherwise proved to the court's satisfaction that the company is unable to pay its debts as they fall due¹²;
- 1460 (7) if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities¹³.

1 le for the purposes of the Insolvency Act 1986 s 221 (as amended): see para 1151 ante.

2 For the meaning of 'creditor' cf para 446 note 3 ante.

3 The Secretary of State may, by regulations in a statutory instrument, increase or reduce the sum of £750; but (1) such regulations may not be made unless a draft of the statutory instrument containing them has been approved by resolution of each House of Parliament; and (2) no increase in such sum affects any case in which the winding-up petition was presented before the coming into force of the increase: Insolvency Act 1986 ss 222(2), 417. As to the Secretary of State see para 11 note 10 ante.

4 For the prescribed form of demand see the Insolvency Rules 1986, SI 1986/1925, rr 4.5, 12.7, Sch 4 Form 4.1 (substituted by SI 1987/1919).

- 5 Insolvency Act 1986 s 222(1)(a).
- 6 Ibid s 222(1)(b).
- 7 Ibid s 223(a).
- 8 Ibid s 223(b).
- 9 Ibid s 224(1)(a).
- 10 Ibid s 224(1)(b).
- 11 Ibid s 224(1)(c).
- 12 Ibid s 224(1)(d).
- 13 Ibid s 224(2).

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1153. Contributories in a winding up.

1153. Contributories in a winding up.

In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the expenses of winding up the company¹; and every contributory is liable to contribute to the company's assets all sums due from him in respect of such liability². The liability of the contributory is in the nature of a speciality debt³.

The liability to contribution is a liability to contribute in the character of a partner or member⁴. A person who is merely a debtor to the company is not a contributory⁵, nor is an officer of the company who is liable to make compensation in respect of a misfeasance⁶. A partner in an unregistered company, liable to make good a representation as to the amount of capital subscribed, is, however, a contributory⁷, and a person who is really a partner or shareholder may, in certain cases, be made liable as a contributory even though the shares are held in another person's name⁸.

In the absence of special provision, a past member of an unregistered corporation is not liable as a contributory⁹.

In the case of an unregistered company engaged in or formed for working mines within the stannaries, a past member is not liable to contribute to the assets if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order¹⁰.

In the event of the death, bankruptcy or insolvency of any contributory, the provisions of the Insolvency Act 1986 with respect to the personal representatives of deceased contributories, and to the trustees of bankrupt or insolvent contributories respectively apply¹¹.

1 Insolvency Act 1986 s 226(1); and see *Re London Marine Insurance Association, Andrews' and Alexander's Case* (1869) LR 8 Eq 176 at 196; *Re Professional Life Assurance Co* (1867) 3 Ch App 167 at 174; *Re Agriculturist Cattle Insurance Co, ex p Official Manager* (1874) 10 Ch App 1.

2 Insolvency Act 1986 s 226(2); and see *Lethbridge v Adams, ex p International Life Assurance Society (Liquidator)* (1872) LR 13 Eq 547.

3 See *Re Muggeridge, Muggeridge v Sharp, ex p Bank of London and National Provincial Insurance Association* (1870) LR 10 Eq 443 (where it was held that the provision now embodied in the Insolvency Act 1986 s 80 (see para 718 ante) applied in the winding up of an unregistered company).

4 *Re European Society Arbitration Acts, ex p British Nation Life Assurance Association* (1878) 8 ChD 679 at 708, CA. Where the rules of a building society provided that in certain circumstances a member should, on notice being given to him by the company, cease to have any interest in the society, a person was held, on a winding up of the society as an unregistered company, not to be liable as a member, where the above-mentioned circumstances had arisen 20 years previously but no notice by the company had been given: *Irvine and Fullarton Property Investment and Building Society v Cuthbertson* (1905) 8 F 1.

5 *Lee and Moor's Case* (1868) LR 5 Eq 368 (mortgagee of a ship who had guaranteed contributions for mutual insurance); cf *Re Hoylake Rly Co, ex p Littledale* (1874) 9 Ch App 257 (transferor of shares on which calls were in arrears).

6 *Davies' Case* (1890) 45 ChD 537; *Marquis of Bute's Case* [1892] 2 Ch 100.

7 *Moore and De la Torre's Case* (1874) LR 18 Eq 661.

8 *Re Wheal Emily Mining Co, Cox's Case* (1863) 4 De GJ & Sm 53; cf *King's Case* (1871) 6 Ch App 196 (a purchaser in good faith of shares in the name of a trustee does not render the purchaser himself liable).

9 *Re Sheffield and South Yorkshire Permanent Building Society* (1889) 22 QBD 470. It would seem that, under the general law, a past member of an unincorporated association might be liable for debts incurred while he was a member (see *Re Sheffield and South Yorkshire Permanent Building Society* supra at 476); and, as all the provisions of the Insolvency Act 1986 with respect to winding up apply to an unregistered company with the exceptions mentioned in s 221 (as amended) (see para 1148 ante), it would seem that past members of an unregistered company are subject to s 74 (see para 705 ante), except in so far as s 226(1) (see the text and note 1 supra) is inconsistent with it.

10 Ibid s 226(3).

11 Ibid s 226(4). See paras 709-711 ante.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1153 Contributories in a winding up

TEXT AND NOTE 11--Insolvency Act 1986 s 226(4) omitted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1154. Petition to wind up a trustee savings bank.

1154. Petition to wind up a trustee savings bank.

A petition for winding up a trustee savings bank could formerly be presented by the Trustee Savings Bank Central Board, or by a commissioner appointed under the Trustee Savings Banks Act 1981¹, as well as by any person authorised under the Insolvency Act 1986² to present a winding-up petition³. However, the trustee savings banks have been reorganised⁴, and the Trustee Savings Bank Central Board ceased to exist and the existing banks⁵ were dissolved on 31 October 1990⁶.

1 le under the Trustee Savings Banks Act 1981 s 35 (repealed).

2 le under the Insolvency Act 1986 Pt IV (ss 73-219) (as amended): see para 450 et seq ante.

3 See *ibid* s 221(6). It seems that this provision ceased to have effect as from 21 July 1986: see the Trustee Savings Banks Act 1985 s 4(3); and the Trustee Savings Banks Act 1985 (Appointed Day) (No 4) Order 1986, SI 1986/1223.

4 See further FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791 et seq.

5 le certified under the Trustee Savings Banks Act 1969 or 1981: Trustee Savings Banks Act 1985 s 1(1)(a) (i).

6 See the Trustee Savings Banks Act 1985 (Appointed Day) (No 7) Order 1990, SI 1990/1982.

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/13. UNREGISTERED AND UNINCORPORATED COMPANIES/1155. Staying and restraining proceedings.

1155. Staying and restraining proceedings.

The statutory provisions¹ relating to staying and restraining claims and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to claims and proceedings against any contributory of the company².

Where an order has been made for winding up an unregistered company, no claim or proceeding may be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court and subject to such terms as the court may impose³.

1 The provisions of the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

2 Ibid s 227. See also *Graham v Edge* (1888) 20 QBD 538; on appeal 20 QBD 683, CA (an action against liquidators of an unregistered company). As to the provisions with respect to staying proceedings after the presentation of a petition see para 887 et seq ante. As to the application of the provisions of the Insolvency Act 1986 to unregistered companies see s 221(1); and para 1148 ante.

UPDATE

UPDATE

1147-1155 Unregistered and Unincorporated Companies

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(1) COMPANIES INCORPORATED IN COMMONWEALTH COUNTRIES/1156. In general.

14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES

(1) COMPANIES INCORPORATED IN COMMONWEALTH COUNTRIES

1156. In general.

Companies incorporated in parts of the Commonwealth outside the United Kingdom¹ may be wound up by the court as unregistered companies².

Her Majesty may by Order in Council direct that such of the provisions of the Insolvency Act 1986 as are specified in the Order, being provisions formerly contained in the Insolvency Act 1985, are to extend to any of the Channel Islands or any colony³ with such modifications as may be so specified⁴.

¹ As to the Commonwealth see COMMONWEALTH vol 13 (2009) PARA 701 et seq. For the meaning of 'United Kingdom' see para 12 note 2 ante.

² As to the winding up of unregistered companies see para 1147 et seq ante. As to the winding up of companies incorporated in foreign countries see para 1157 et seq post.

³ For the meaning of 'colony' see COMMONWEALTH vol 13 (2009) PARA 705; STATUTES vol 44(1) (Reissue) para 1383.

⁴ Insolvency Act 1986 s 442. In exercise of the power so conferred Her Majesty made the Insolvency Act 1986 (Guernsey) Order 1989, SI 1989/2409, which provides for co-operation between the courts of the Bailiwick of Guernsey (including Alderney and Sark) and the courts of the United Kingdom, and which came into force on 1 February 1990: art 2. As to Channel Island and Isle of Man companies see COMPANIES. The company voluntary arrangement provisions in the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq ante) have been extended to companies incorporated in the Isle of Man: *Re Television Trade Rentals Ltd* [2002] EWHC 211 (Ch), [2002] BPIR 859.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(2) FOREIGN COMPANIES/1157. Winding up.

(2) FOREIGN COMPANIES

1157. Winding up.

Save for companies based in other member states of the European Union, to which the European Regulation on Insolvency Proceedings¹ applies, a foreign company, partnership or association may be wound up as an unregistered company² if it has assets in England³, or if a sufficient connection with England can be shown and there is a reasonable possibility that benefit would accrue to the company's creditors from the winding up⁴.

Where a foreign company which has been carrying on business in Great Britain⁵ ceases to carry on business in Great Britain, it may be wound up as an unregistered company notwithstanding that it has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated⁶. As regards proofs to be submitted by creditors, the dissolution of the foreign company abroad must be disregarded⁷.

When a winding-up order has been made, the dissolved company must be deemed to be revived in order to secure the effective collection and distribution of the assets; and thus the liquidator may be permitted to bring a claim on behalf of the company⁸. Such a revivification has no retroactive effect⁹.

In relation to companies based in other member states of the European Union (other than Denmark), the English courts have jurisdiction in respect of main proceedings where the debtor company's centre of main interests is situated in the United Kingdom, and in respect of secondary (or territorial) proceedings where the company's centre of main interest is in another member state (other than Denmark) but assets are situated in the United Kingdom¹⁰.

¹ ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) on insolvency proceedings. As to the European Regulation on Insolvency Proceedings see para 46 et seq ante.

² For the meaning of 'unregistered company' for the purposes of the Insolvency Act 1986 Pt V (ss 220-229) (as amended) see s 220 (as amended); and para 1147 ante. As to the winding up of unregistered companies generally see para 1147 et seq ante; and as to the winding up of overseas companies see paras 1163-1164 post.

³ See *Banque des Marchands de Moscou (Koupetschesky) v Kindersley* [1951] Ch 112, [1950] 2 All ER 549, CA. See further *Re Union Bank of Calcutta, ex p Watson* (1850) 3 De G & Sm 253; *Re Commercial Bank of India* (1868) LR 6 Eq 517; *Re Matheson Bros Ltd* (1884) 27 ChD 225; *Re Commercial Bank of South Australia* (1886) 33 ChD 174; *Re Mercantile Bank of Australia* [1892] 2 Ch 204; *Re Jarvis Conklin Mortgage Co* (1895) 11 TLR 373; *Re Australian Joint-Stock Bank Ltd* (1897) 41 Sol Jo 469; *Re Syria Ottoman Rly Co* (1904) 20 TLR 217; *Re Naamlouze Vennootschap Handelmaatschappij Wokar* [1946] Ch 98.

It is not necessary to show that the company had a branch or office in England or that it had carried on its business operations in England from some established place of business: *Re Azoff-Don Commercial Bank* [1954] Ch 315, [1954] 1 All ER 947; *Re Compania Merabello San Nicholas SA* [1973] Ch 75, [1972] 3 All ER 448. There appears to have been a gradual relaxation of the criteria necessary to obtain a winding-up order. At first it was thought that a foreign company could not be wound up in England as an unregistered company unless it had an established place of business in England, even though it had ceased to carry on business and was being wound up in the country of its incorporation: see *Re Lloyd Generale Italiano* (1885) 29 ChD 219 at 220 (where the company had no assets in England); and see *Banque des Marchands de Moscou (Koupetschesky) v Kindersley* supra at 117, 128 and at 557, 558 (where the authority for this view was considered). Later it was held to be sufficient if the company had conducted business at a place in England: *Re Tovarishstvo Manufacture Liudvig-Rabenek* [1944] Ch 404, [1944] 2 All ER 556 (where the company's director had stayed at a hotel and transacted business from it); *Banque des Marchands de Moscou (Koupetschesky) v Kindersley* supra (visits to

England by manager of goods section of bank for purposes of business associations). The present position is as stated in the text; and see note 6 infra.

4 *Re Compania Merabello San Nicholas SA* [1973] Ch 75, [1972] 3 All ER 448, where the winding up was held to be of benefit to the petitioning creditors, having regard to the Third Parties (Rights against Insurers) Act 1930 s 1 (as amended) (see CHOSER IN ACTION vol 13 (2009) PARA 90; INSURANCE vol 25 (2003 Reissue) para 679 et seq), even though there were no other distributable assets (disapproving *Re Lloyd Generale Italiano* (1885) 29 ChD 219). See also *Re Allobrogia Steamship Corp*n [1978] 3 All ER 423 (winding up of benefit to creditors having regard to the Third Parties (Rights against Insurers) 1930 Act); *Re Eloc Electro-Optieck and Communicatie BV* [1982] Ch 43, [1981] 2 All ER 1111 (winding up of benefit to petitioners as they would qualify for redundancy payment); *Re a Company (No 00359 of 1987)* [1988] Ch 210, sub nom *International Westminster Bank plc v Okeanos Maritime Corp*n [1987] 3 All ER 137 (company carrying on business within the jurisdiction; reasonable possibility that a winding up would benefit creditors because of the possibility of the liquidator recovering contributions to the assets of the company under the Insolvency Act 1986 s 213 (fraudulent trading: see para 911 ante) or s 214 (wrongful trading: see para 914 ante)); *Re Real Estate Development Co* [1991] BCLC 210 (insufficient connection with England and Wales); *Re a Company (No 003102 of 1991)*, ex p *Nyckeln Finance Co Ltd* [1991] BCLC 539 (business of company carried on in London); *Re Titan International Inc* [1998] 1 BCLC 102, CA; *New Hampshire Insurance Co v Rush & Tompkins Group plc* [1998] 2 BCLC 471; *Banco Nacional de Cuba v Cosmos Trading Corp*n [2000] 1 BCLC 813, CA; *Atlantic & General Investment Trust Ltd v Richbell Information Services Inc* [2000] 2 BCLC 778, [2000] BCC 111; *Stocznia Gdanska SA v Latreefers Inc (No 2)* [2001] 2 BCLC 116, sub nom *Re Latreefers Inc* [2001] BCC 174, CA.

5 For the meaning of 'Great Britain' see para 12 note 2 ante.

6 Insolvency Act 1986 s 225(1) (renumbered by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 10). This provision is now subject to the European Regulation on Insolvency Proceedings (see para 46 et seq ante); Insolvency Act 1986 Act s 225(2) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 10).

This provision, when first enacted, was merely declaratory of the existing law (*Russian and English Bank and Florence Montefiore Guedalla v Baring Bros & Co Ltd* [1936] AC 405 at 424, [1936] 1 All ER 505 at 516, HL, per Lord Atkin; *Re Tovarishstvo Manufactur Liudvig-Rabenek* [1944] Ch 404 at 413, [1944] 2 All ER 556 at 561-562), and does not restrict the wider jurisdiction to wind up as an unregistered company a foreign company which had assets in England (*Banque des Marchands de Moscou (Koupetschesky) v Kindersley* [1951] 1 Ch 112 at 131, [1950] 2 All ER 549 at 560, CA).

A dissolved foreign company may be wound up if there are assets in England, and there are persons present in England claiming as creditors: *Re Azoff-Don Commercial Bank* [1954] Ch 315, [1954] 1 All ER 947 (following *Banque des Marchands de Moscou (Koupetschesky) v Kindersley* supra); *IRC v Highland Engineering Ltd* 1975 SLT 203, Ct of Sess. An order will not be refused because it will benefit foreign creditors: *Re Azoff-Don Commercial Bank* supra. The presence of assets in England is no longer an essential condition: see the cases cited in note 3 supra.

In *Re Russian and English Bank* [1932] 1 Ch 663, a winding-up order was made, although the petitioner's debt was disputed. This decision was followed in *Re Russian Bank of Foreign Trade* [1933] Ch 745.

7 *Re Russian Commercial and Industrial Bank* [1955] Ch 148, [1955] 1 All ER 75.

8 *Russian and English Bank and Florence Montefiore Guedalla v Baring Bros & Co Ltd* [1936] AC 405, [1936] 1 All ER 505, HL; cf *Banque des Marchands de Moscou (Koupetschesky) v Kindersley* [1951] Ch 112, [1950] 2 All ER 549, CA; *Re Banque des Marchands de Moscou (Koupetschesky)* [1958] Ch 182, [1957] 3 All ER 182.

9 *Re Banque des Marchands de Moscou (Koupetschesky)*, *Wilenskin v Liquidator* [1952] 1 All ER 1269; applied in *Re Banque des Marchands de Moscou (Koupetschesky)* [1954] 2 All ER 746, [1954] 1 WLR 1108.

10 See the European Regulation on Insolvency Proceedings art 3 paras 1, 2; and para 48 ante. For the meanings of 'main proceedings' and 'secondary proceedings' see para 48 ante. As to territorial proceedings see para 49 ante. As to the meaning of 'centre of main interests' see para 47 note 6 ante. For the meaning of 'United Kingdom' see para 12 note 2 ante.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(2) FOREIGN COMPANIES/1158. Inchoate foreign companies.

1158. Inchoate foreign companies.

The court will not make an order for the winding up of an inchoate foreign company which has never come into existence¹.

¹ *Re Imperial Anglo-German Bank* (1872) 26 LT 229.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(2) FOREIGN COMPANIES/1159. Liquidation already commenced abroad.

1159. Liquidation already commenced abroad.

Save for companies based in other member states of the European Union, to which the European Regulation on Insolvency Proceedings¹ applies, the jurisdiction of the court to make a winding-up order is unaffected by the fact that a liquidation has already commenced in the country of incorporation; and in these cases:

- 1461 (1) a winding-up order made in England will normally be regarded as giving rise to a winding up ancillary to that being conducted in the country of incorporation;
- 1462 (2) the winding up in England will be ancillary in the sense that it will not be within the power of the English liquidators to get in and realise all the assets of the company worldwide and they will necessarily have to concentrate on getting in and realising the English assets;
- 1463 (3) since, in order to achieve a *pari passu* distribution between all the company's creditors, it will normally be necessary for there to be a pooling of assets worldwide and for a dividend to be declared out of the assets comprised in that pool, the winding up in England will be ancillary in the sense also that it will be the liquidators in the principal liquidation who will be best placed to declare the dividend and to distribute the assets in the pool accordingly;
- 1464 (4) the ancillary character of an English winding up does not, however, relieve the English court of its obligation to apply English substantive and procedural law, including English insolvency law, to the resolution of any issue arising in the winding up which is brought before the court, although it is possible that English conflict of law rules will lead to the application of some foreign law principle in order to resolve a particular issue².

Although a limitation in the winding-up order, the effect of which would merely be to reserve specially to the court matters in respect of which the liquidator is by law at liberty to apply to the court, would not be *ultra vires*, no such limitation will be inserted unless there are special circumstances known to the court³.

¹ ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1). As to the European Regulation on Insolvency Proceedings see para 46 et seq.

² *Re Bank of Credit and Commerce International SA (in liquidation) (No 10)* [1997] Ch 213, [1996] 4 All ER 796; *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch 385 at 394, CA, per Vaughan Williams J; *Re Matheson Bros Ltd* (1884) 27 ChD 225; *Re Commercial Bank of South Australia* (1886) 33 ChD 174; *Re Federal Bank of Australia Ltd* (1893) 62 LJ Ch 561, CA; cf *North Australian Territory Co Ltd v Goldsborough, Mort & Co Ltd* (1889) 61 LT 716; *Re Suidair International Airways Ltd* [1951] Ch 165, [1950] 2 All ER 920; *Felixstowe Dock and Rly Co v United States Lines Inc* [1989] QB 360, [1988] 2 All ER 77.

³ *Re Hibernian Merchants Ltd* [1958] Ch 76, [1957] 3 All ER 97.

UPDATE

1159 Liquidation already commenced abroad

NOTE 2--*Re Bank of Credit and Commerce*, cited, applied: *Re HIH Casualty and General Insurance Ltd*; *McMahon v McGrath* [2008] UKHL 21, [2008] 3 All ER 869.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(2) FOREIGN COMPANIES/1160. Bona vacantia.

1160. Bona vacantia.

Where the foreign company which is being wound up has already been dissolved, or has otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated, all its assets in the United Kingdom will have vested in the Crown as bona vacantia¹. The title which the Crown acquires to those assets is nevertheless defeasible and is defeated upon the making of the winding-up order². As the Crown is, therefore, affected by the making of a winding-up order, it should always be served with the winding-up petition³. If there are surplus assets after satisfaction of all the just claims against the company, the Crown will only take in priority to those members of the company who fail to establish their title to those assets under the law of incorporation of the company⁴.

1 *Re Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA; *Re Russian Bank for Foreign Trade* [1933] Ch 745 at 765. As to bona vacantia see generally para 933 et seq ante. For the meaning of 'United Kingdom' see para 12 note 2 ante.

2 *Russian and English Bank and Florence Montefiore Guedalla v Baring Bros & Co Ltd* [1936] AC 405 at 426-427, [1936] 1 All ER 505 at 518, HL, per Lord Atkin. See also *Re Azoff-Don Commercial Bank* [1954] Ch 315, [1954] 1 All ER 947; *Re Banque des Marchands de Moscou (Koupetschesky)* [1958] Ch 182, [1957] 3 All ER 182.

3 The proper party to appear on Her Majesty's behalf will be, it seems, the Treasury Solicitor: see *Practice Note* [1952] WN 170 (bona vacantia; dissolution of company on its ceasing to exist, not winding up). As to the Treasury Solicitor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 541.

4 *Re Banque des Marchands de Moscou (Koupetschesky)* [1958] Ch 182 (in which *Re Banque Industrielle de Moscou* [1952] Ch 919, [1952] 2 All ER 532 was not followed).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(2) FOREIGN COMPANIES/1161. Application of insolvency law to foreign companies.

1161. Application of insolvency law to foreign companies.

The Secretary of State¹ may by order provide for a provision of the Insolvency Act 1986 to apply, with or without modification, in relation to a company incorporated outside Great Britain². Such an order: (1) may make provision generally or for a specified purpose only; (2) may make different provision for different purposes; and (3) may make transitional, consequential or incidental provision³. It must be made by statutory instrument, and will be subject to annulment in pursuance of a resolution of either House of Parliament⁴.

1 As to the Secretary of State see para 11 note 10 ante.

2 Enterprise Act 2002 s 254(1). For the meaning of 'Great Britain' see para 12 note 2 ante.

3 Ibid s 254(2).

4 Ibid s 254(3).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(2) FOREIGN COMPANIES/1162. Model law on cross-border insolvency.

1162. Model law on cross-border insolvency.

The Secretary of State¹ may by regulations make any provision which he considers necessary or expedient for the purpose of giving effect, with or without modifications, to the model law on cross-border insolvency². In particular, the regulations may: (1) apply any provision of insolvency law³ in relation to foreign proceedings⁴ whether begun before or after the regulations come into force; (2) modify the application of insolvency law whether in relation to foreign proceedings or otherwise; (3) amend any provision concerning co-operation between courts⁵, and may apply or, as the case may be, modify the application of insolvency law in relation to the Crown⁶. The regulations may make different provision for different purposes and may make any supplementary, incidental or consequential provision, or any transitory, transitional or saving provision, which the Secretary of State considers necessary or expedient⁷. Regulations made under these provisions are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of each House of Parliament⁸.

1 As to the Secretary of State see para 11 note 10 ante.

2 Insolvency Act 2000 s 14(1). 'Model law on cross-border insolvency' means the model law contained in Annex I of the Report of the 30th session of the United Nations Commission on International Trade Law ('UNCITRAL'): Insolvency Act 2000 s 14(4). See further CONFLICT OF LAWS vol 8(3) (Reissue) para 473 et seq.

3 'Insolvency law' has the same meaning as in *ibid* s 426(10)(a), (b) (see para 1029 note 1 heads (1), (2) ante): s 14(4).

4 'Foreign proceedings' has the same meaning as in the model law on cross-border insolvency (see CONFLICT OF LAWS vol 8(3) (Reissue) para 499): Insolvency Act 2000 s 14(4).

5 *Ibid* s 426 (as amended): see para 1029 ante.

6 *Ibid* s 14(2).

7 *Ibid* s 14(3).

8 *Ibid* s 14(5).

UPDATE

1162 Model law on cross-border insolvency

TEXT AND NOTES--Regulations have been made providing for the UNCITRAL Model Law to have the force of law: see the Cross-Border Insolvency Regulations 2006, SI 2006/1030 (amended by SI 2009/1941). Nothing in the Insolvency Act 1986 s 388 (see para 8) applies to anything done by a foreign representative under or by virtue of SI 2006/1030: reg 8.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(3) OVERSEA COMPANIES/1163. Particulars to be delivered to the registrar; winding up.

(3) OVERSEA COMPANIES

1163. Particulars to be delivered to the registrar; winding up.

Where a company, being a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain¹, is being wound up, it must deliver to the registrar of companies for registration a return in the prescribed form containing the following particulars:

- 1465 (1) the name of the company;
- 1466 (2) whether the company is being wound up by an order of the court and, if so, the name and address of the court and the date of the order;
- 1467 (3) if the company is not being so wound up, as a result of what action the winding up has commenced;
- 1468 (4) whether the winding up has been instigated by the company's members, the company's creditors or some other person or persons, and, where the winding up has been instigated by some other person or persons, the identity of that person or those persons must be given; and
- 1469 (5) the date on which the winding up became or will be effective².

The period allowed for delivery of such a return is 14 days from the date on which the winding up begins³.

A person appointed to be the liquidator of a company, being a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain⁴, must deliver to the registrar for registration a return in the prescribed form containing the following particulars:

- 1470 (a) his name and address;
- 1471 (b) the date of his appointment; and
- 1472 (c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company's constitution⁵.

The period allowed for delivery of such a return is 14 days from the date of the liquidator's appointment⁶.

The liquidator of a company, being a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain⁷, must deliver to the registrar for registration a return in the prescribed form upon the occurrence of the following events:

- 1473 (i) the termination of the winding up of the company; and
- 1474 (ii) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance⁸.

The following particulars must be given, namely, in the case of head (i) above, the name of the company and the date on which the winding up terminated and, in the case of head (ii) above,

the name of the company and the date on which the company ceased to be registered⁹. The period allowed for delivery of such a return is 14 days from the date of the event concerned¹⁰.

The obligation to deliver a return under these provisions¹¹ applies in respect of each branch which the company has in Great Britain; but, where the company has more than one branch in a part of Great Britain, a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given¹².

No return is, however, required under these provisions¹³ in respect of a winding up order¹⁴ under Part V of the Insolvency Act 1986¹⁵.

If a company fails to deliver a return¹⁶ within the period allowed for compliance, it, and every person who immediately before the end of that period was a director¹⁷ of it, is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum and, on conviction after continued contravention in the case of a continuing offence, to a daily default fine not exceeding £100¹⁸.

If a liquidator fails so to deliver a return¹⁹ within the period allowed for compliance, he is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum and, on conviction after continued contravention in the case of a continuing offence, to a daily default fine not exceeding £100²⁰.

It is a defence for a person charged with an offence under these provisions to prove that he took all reasonable steps for securing compliance with the requirements concerned²¹.

1 I.e. a company to which the Companies Act 1985 s 690A (as added) applies. For the meanings of 'United Kingdom' and 'Great Britain' see para 12 note 2 ante.

2 Ibid ss 703O, 703P(1) (ss 730O, 730P added by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, reg 3(1), Sch 2 para 19). For the prescribed form of return see the Companies (Forms) (Amendment) Regulations 1992, SI 1992/3006, reg 4(1), Sch 2 Form 703P(1). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

3 Companies Act 1985 s 703P(2) (as added: see note 2 supra).

4 See note 1 supra.

5 Companies Act 1985 s 703P(3) (as added: see note 2 supra). For the prescribed form of return see the Companies (Forms) (Amendment) Regulations 1992, SI 1992/3006, Sch 2 Form 703P(3).

6 Companies Act 1985 s 703P(4) (as added: see note 2 supra).

7 See note 1 supra.

8 Companies Act 1985 s 703P(5)(a), (b) (as added: see note 2 supra). For the prescribed form of return see the Companies (Forms) (Amendment) Regulations 1992, SI 1992/3006, Sch 2 Form 703P(5).

9 Companies Act 1985 s 703P(5)(i), (ii) (as added: see note 2 supra).

10 Ibid s 703P(6) (as added: see note 2 supra).

11 I.e. under ibid s 703P(1), (3) or (5) (as added): see the text and notes 1-10 supra.

12 Ibid s 703P(7) (as added: see note 2 supra).

13 See note 11 supra.

14 I.e. under the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

15 Companies Act 1985 s 703P(8) (as added: see note 2 supra).

16 I.e. pursuant to ibid s 703P(1) (as added): see the text and notes 1-2 supra.

17 For the meaning of 'director' for these purposes see COMPANIES.

18 Companies Act 1985 s 703R(1) (s 703R added by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, Sch 2 para 19). See also the Companies Act 1985 s 730, Sch 24 (amended by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, reg Sch 3 paras 3, 9(1), (2)). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

19 Ie pursuant to the Companies Act 1985 s 703P(3) or (5) (as added): see the text and notes 4-9 supra.

20 Ibid s 703R(2) (as added: see note 18 supra). See also s 730, Sch 24 (as amended: see note 18 supra).

21 Ibid s 703R(3) (as added: see note 18 supra).

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1164. Particulars to be delivered to the registrar; insolvency proceedings etc.

Where a company, being a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain¹, becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it must deliver to the registrar of companies for registration a return in the prescribed form containing the following particulars:

- 1475 (1) the name of the company;
- 1476 (2) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;
- 1477 (3) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;
- 1478 (4) whether the proceedings have been instigated by the company's members, the company's creditors or some other person or persons, and, where the proceedings have been instigated by some other person or persons, the identity of that person or those persons must be given; and
- 1479 (5) the date on which the proceedings became or will become effective².

Where a company, being a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain³, ceases to be subject to any of the above proceedings, it must deliver to the registrar for registration a return in the prescribed form containing the following particulars:

- 1480 (a) the name of the company; and
- 1481 (b) the date on which it ceased to be subject to the proceedings⁴.

The period allowed for delivery of a return under these provisions⁵ is 14 days from the date on which the company becomes subject or, as the case may be, ceases to be subject to the proceedings concerned⁶.

The obligation to deliver a return under these provisions⁷ applies in respect of each branch which the company has in Great Britain; but, where the company has more than one branch in a part of Great Britain, a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given⁸.

If a company fails so to deliver a return⁹ within the period allowed for compliance, it, and every person who immediately before the end of that period was a director¹⁰ of it, is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum and, on conviction after continued contravention in the case of a continuing offence, to a daily default fine not exceeding £100¹¹.

It is a defence for a person charged with an offence under these provisions to prove that he took all reasonable steps for securing compliance with the requirements concerned¹².

- 1 le a company to which the Companies Act 1985 s 690A (as added) applies. For the meanings of 'United Kingdom' and 'Great Britain' see para 12 note 2 ante.
- 2 Ibid ss 703O, 703Q(1) (ss 703O, 703Q added by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, reg 3(1), Sch 2 para 19). For the prescribed form of return see the Companies (Forms) (Amendment) Regulations 1992, SI 1992/3006, reg 4(1), Sch 2 Form 703Q(1). As to the registrar of companies see COMPANIES vol 14 (2009) PARA 131 et seq.
- 3 See note 1 supra.
- 4 Companies Act 1985 s 703Q(2) (as added: see note 2 supra). For the prescribed form of return see the Companies (Forms) (Amendment) Regulations 1992, SI 1992/3006, Sch 2 Form 703Q(2).
- 5 le under the Companies Act 1985 s 703Q(1) or (2) (as added): see the text and notes 1-4 supra.
- 6 Ibid s 703Q(3) (as added: see note 2 supra).
- 7 See note 5 supra.
- 8 Companies Act 1985 s 703Q(4) (as added: see note 2 supra).
- 9 le pursuant to ibid s 703Q(1) or (2) (as added): see the text and notes 1-4 supra.
- 10 For the meaning of 'director' for these purposes see COMPANIES.
- 11 Companies Act 1985 s 703R(1) (s 703R added by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, Sch 2 para 19). See also the Companies Act 1985 s 730, Sch 24 (amended by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, reg Sch 3 paras 3, 9(1), (2)). As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.
- 12 Companies Act 1985 s 703R(3) (as added: see note 11 supra).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/14. COMPANIES FORMED OUTSIDE ENGLAND AND WALES/(4) EUROPEAN ECONOMIC INTEREST GROUPINGS/1165. In general.

(4) EUROPEAN ECONOMIC INTEREST GROUPINGS

1165. In general.

Part III of the Insolvency Act 1986¹ applies to European Economic Interest Groupings² and their establishments as if they were companies registered under the Companies Act 1985³.

The Secretary of State is the competent authority for the purposes of making an application to the court⁴ for the winding up of a European Economic Interest Grouping in certain circumstances⁵. On an application by the Secretary of State, the court may order the winding up of a European Economic Interest Grouping which has an official address in Great Britain, if the European Economic Interest Grouping acts contrary to the public interest and it is expedient in the public interest that the European Economic Interest Grouping should be wound up and the court is of the opinion that it is just and equitable for it to do so⁶.

Where a European Economic Interest Grouping is wound up as an unregistered company⁷, the provisions of Part V of the Insolvency Act 1986 apply in relation to the European Economic Interest Grouping as if any reference in that Act and in the Companies Act 1985 to a director or past director of a company included a reference to a manager of the European Economic Interest Grouping and any other person who has or has had control or management of the European Economic Interest Grouping's business⁸.

At the end of the period of three months beginning with the day of receipt by the registrar⁹ of a notice of the conclusion of the liquidation of a European Economic Interest Grouping, it is dissolved¹⁰.

Where a European Economic Interest Grouping is wound up as an unregistered company¹¹, specified provisions¹² of the Company Directors Disqualification Act 1986 apply in relation to it as if any reference to a director or past director of a company included a reference to a manager of the European Economic Interest Grouping and any other person who has or has had control or management of its business and the European Economic Interest Grouping were a company as defined¹³ by the Company Directors Disqualification Act 1986¹⁴.

1 I.e. the Insolvency Act 1986 Pt III (ss 28-71) (as amended): see para 380 et seq ante; and COMPANIES vol 15 (2009) PARA 1337 et seq.

2 For these purposes, 'European Economic Interest Grouping' means a grouping being formed in pursuance of EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1): European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 2(1). The provisions of EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1) are set out in the European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 2(1), Sch 1.

3 Ibid reg 19(1).

4 I.e. under EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1) art 32(1). As to the Secretary of State see para 11 note 10 ante.

5 European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 7(1).

6 Ibid reg 7(2). As to the just and equitable ground for winding up see paras 448-449 ante.

7 I.e. under the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

8 European Economic Interest Grouping Regulations 1989, 1989/638, reg 8(1). In its application to European Economic Interest Groupings, the Insolvency Act 1986 s 221(1) is modified so as to refer to EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1): European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 8(1).

9 For the meaning of 'registrar' see COMPANIES vol 14 (2009) PARA 131.

10 European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 8(2).

11 See note 7 *supra*.

12 In the Company Directors Disqualification Act 1986 s1 (as amended), s 2 (as amended), ss 4-11 (as amended), s 12(2), ss 15-17 (as amended), s 20 (as amended), s 22 (as amended), Sch 1 (as amended): see para 1107 *et seq ante*.

13 In as defined by *ibid* s 22(2)(b): see para 1107 note 4 *ante*.

14 European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 20.

UPDATE

1165 In general

NOTE 12--Company Directors Disqualification Act 1986 s 12(2) amended: SI 2009/1941.

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15. INSOLVENT PARTNERSHIPS

(1) IN GENERAL

1166. Insolvency procedures; application of statutory provisions.

The Lord Chancellor has power to provide, by order made with the concurrence of the Secretary of State, that such provisions of the Insolvency Act 1986 as may be specified in the order are to apply in relation to insolvent partnerships with such modifications as may be so specified¹. The Insolvent Partnerships Order 1994² came into force on 1 December 1994³.

Insolvent partnerships may be the subject of a voluntary arrangement under Part I of the Insolvency Act 1986 as modified⁴. Where insolvency orders⁵ are made against an insolvent partnership and an insolvent member⁶ of that partnership in his capacity as such, a corporate member⁷ of that partnership may be the subject of a voluntary arrangement under Part I of the Insolvency Act 1986 and an individual member of that partnership may be the subject of a voluntary arrangement under Part VIII of the Insolvency Act 1986⁸.

Insolvent partnerships may be the subject of an administration order under Part II of the Insolvency Act 1986 as modified⁹.

Insolvent partnerships may be wound up as unregistered companies under Part V of the Insolvency Act 1986¹⁰ as modified and they may be so wound up:

- 1482 (1) on the petition of a creditor, of a liquidator or of a temporary administrator¹¹ where no concurrent petition is presented against a member¹² or where concurrent petitions are presented against one or more members¹³; or
- 1483 (2) on a member's petition where no concurrent petition is presented against a member¹⁴ or where concurrent petitions are presented against all members¹⁵.

Where the individual members of an insolvent partnership present a joint petition for the bankruptcy of each of them in his capacity as a member of the partnership, certain provisions of the Insolvency Act 1986 relating to bankruptcy apply as modified in relation to such bankruptcies and the winding up of the partnership business and the administration of its property without the partnership being wound up as an unregistered company under the Insolvency Act 1986¹⁶.

Where an insolvent partnership is being wound up as an unregistered company under Part V of the Insolvency Act 1986 as modified, certain provisions of the Company Directors Disqualification Act 1986 apply with modifications¹⁷.

The Insolvent Partnerships Order 1994, in the case of insolvency proceedings¹⁸ in relation to companies and partnerships, relates to companies and partnerships which the courts in England and Wales have jurisdiction to wind up and, in the case of insolvency proceedings in relation to individuals, extends to England and Wales only¹⁹.

Nothing in the Insolvent Partnerships Order 1994 is to be taken as preventing a petition being presented against an insolvent partnership under the Financial Services and Markets Act 2000²⁰ or under any other enactment²¹. Nor is anything in the Insolvent Partnerships Order 1994 to be

taken as preventing any creditor or creditors owed one or more debts by an insolvent partnership from presenting a petition under the Insolvency Act 1986 against one or more members of the partnership liable for that debt or those debts, as the case may be, without including the others and without presenting a petition for the winding up of the partnership as an unregistered company²².

1 Insolvency Act 1986 s 420(1). An order so made may make different provisions for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient (s 420(2)); and any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (s 420(3)). As to the Secretary of State see para 11 note 10 ante. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

An order under s 420 (as amended) may make provision in relation to the European Regulation on Insolvency Proceedings (ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) (see para 46 et seq)) but any such provision may not create an offence of a kind referred to in the European Communities Act 1972 Sch 2 para 1(1)(d) (new crimes punishable with more than a specified punishment): Insolvency Act 1986 s 420(1A), (1B) (added by the Insolvency Act 1986 (Amendment) Regulations 2002, SI 2002/1037, regs 2, 3(5)).

2 Ie the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended).

3 Ibid art 1(1). The Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) does not apply in relation to any case in which a winding-up order or a bankruptcy order was made under the Insolvent Partnerships Order 1986, SI 1986/2142 (revoked), in relation to a partnership or an insolvent member of a partnership; and, where the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) does not apply, the law in force immediately before that Order came into force continues to have effect: art 19(1).

Where winding-up or bankruptcy proceedings commenced under the provisions of the Insolvent Partnerships Order 1986, SI 1986/2142 (revoked) and were pending in relation to a partnership or an insolvent member of a partnership immediately before the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) came into force: (1) those proceedings are to be continued, after the coming into force of the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) in accordance with the provisions of that order; or (2) if the court so directs, they are to be continued under the provisions of the Insolvent Partnerships Order 1986, SI 1986/2142 (revoked), in which case the law in force immediately before the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) came into force continues to have effect: art 19(2). For this purpose, winding-up or bankruptcy proceedings are pending if a statutory or written demand has been served or a winding-up or bankruptcy petition has been presented: art 19(3).

4 See ibid art 4, Sch 1 (as substituted); and para 1169 et seq post. As to the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) see para 71 et seq ante.

5 For the meaning of 'insolvency order' see para 1191 note 1 post.

6 For the meaning of 'insolvent member' see para 1191 note 2 post.

7 For the meaning of 'corporate member' see para 1191 note 1 post.

8 See the Insolvent Partnerships Order 1994, SI 1994/2421, art 5; and para 1191 et seq post. As to the Insolvency Act 1986 Pt VIII (ss 252-263G) (as amended) see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 See the Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 (as amended); and para 1192 et seq post. As to the Insolvency Act 1986 Pt IX (ss 264-371) (as amended) see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

10 As to ibid Pt V (ss 220-229) see para 1147 et seq ante.

11 Ie a liquidator within the meaning of the European Regulation on Insolvency Proceedings art 2(b) appointed in proceedings by virtue of art 3(1) (see para 46 et seq ante), and a temporary administrator within the meaning of art 38 (see para 450 note 8 ante).

12 See the Insolvent Partnerships Order 1994, SI 1994/2421, art 7, Sch 3 Pts I, II (paras 1-10) (as amended); and para 1204 et seq post.

13 See ibid art 8, Sch 4 Pts I, II (paras 1-30) (as amended); and para 1218 et seq post. In such a case, where an insolvent partnership is being wound up, certain provisions of the Insolvency Act 1986 as modified apply to the winding up of a corporate member or former corporate member (see the Insolvent Partnerships Order 1994,

SI 1994/2421, art 8(4), (5), (8), (9); and para 1218 et seq post) and to the bankruptcy of an individual member or former individual member (see art 8(6)-(9); and para 1218 et seq post).

14 See ibid art 9, Sch 3 Pt I (paras 1-5) (as amended), Sch 5 (as amended); and para 1254 et seq post.

15 See ibid art 10, Sch 4 Pt I (paras 1-4) (as amended), Sch 6 (as amended); and para 1260 et seq post. In such a case, where an insolvent partnership is being wound up, certain provisions of the Insolvency Act 1986 as modified apply to the winding up of a corporate member or former corporate member (see the Insolvent Partnerships Order 1994, SI 1994/2421, art 10(2), (3), (6); and para 1260 post) and to the bankruptcy of an individual member (see art 10(4), (5), (6); and para 1260 post).

16 See ibid art 11, Sch 7 (as amended); and para 1266 et seq post.

17 See ibid art 16, Sch 8 (as amended); and para 1297 et seq post.

18 For these purposes, 'insolvency proceedings' means any proceedings under the Insolvency Act 1986, the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) or the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvent Partnerships Order 1994, SI 1994/2421, arts 1(3), 2(1).

19 Ibid art 1(2).

20 Ie under the Financial Services and Markets Act 2000 s 367 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497).

21 Insolvent Partnerships Order 1994, SI 1994/2421, art 19(4) (substituted by SI 2001/3649; and amended by SI 2002/2708). These provisions are subject to an exception where the Insolvency Act 1986 Sch A1 para 12 (as added) (see para 88 ante) as applied by the Insolvent Partnership Order 1994, SI 1994/2421 (as amended) has the effect of preventing a petition being so presented: art 19(4) (as so substituted and amended).

22 Ibid art 19(5).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1166 Insolvency procedures; application of statutory provisions

TEXT AND NOTE 1--Insolvency Act 1986 s 420 further amended: Constitutional Reform Act 2005 Sch 4 para 191. The Lord Chancellor's function under the 1986 Act s 420(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(1) IN GENERAL/1167. Interpretation; expressions appropriate to companies.

1167. Interpretation; expressions appropriate to companies.

The following provisions apply for the interpretation in relation to insolvent partnerships of expressions appropriate to companies in provisions of the Insolvency Act 1986 and of the Company Directors Disqualification Act 1986 where they are applied by the Insolvent Partnerships Order 1994¹, unless the contrary intention appears².

References to companies are to be construed as references to insolvent partnerships and all references to the registrar of companies are to be omitted³.

References to shares of a company are to be construed:

- 1484 (1) in relation to an insolvent partnership with capital, as references to rights to share in that capital; and
- 1485 (2) in relation to an insolvent partnership without capital, as references to interests conferring any right to share in the profits or liability to contribute to the losses of the partnership, or giving rise to an obligation to contribute to the debts or expenses of the partnership in the event of a winding up⁴.

Other expressions appropriate to companies are to be construed, in relation to an insolvent partnership, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to a partnership⁵.

1 le the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended). As to the application of the statutory provisions by the order see para 1166 ante.

2 Ibid arts 2(1), 3(1).

3 Ibid art 3(2).

4 Ibid art 3(3).

5 Ibid art 3(4). Certain expressions are defined, except in so far as the context otherwise requires, for the purposes of the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): see art 2(1). Such definitions are added to those in the Insolvency Act 1986 s 436 (save for the definition of the Insolvency Act 1986 as 'the Act'): Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1), (2). Where provisions of the Insolvency Act 1986 applied by the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) refer to any provision of the Insolvency Act 1986 so applied, the references are to be construed, unless the context otherwise requires, as references to the provisions as so applied: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1), (3).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(1) IN GENERAL/1168. Application of subordinate legislation and practice direction.

1168. Application of subordinate legislation and practice direction.

Specified subordinate legislation¹ applies as from time to time in force and with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act 1986 and of the Company Directors Disqualification Act 1986 which are applied by the Insolvent Partnerships Order 1994².

In the case of any conflict between any provision of the subordinate legislation so applied and any provision of the Insolvent Partnerships Order 1994, the latter provision prevails³.

For the purposes of the practice direction on insolvency proceedings, 'insolvency proceedings' includes proceedings under the Insolvent Partnerships Order 1994⁴.

1 The subordinate legislation specified is: the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952; the Insolvency Practitioners (Recognised Professional Bodies) Order 1986, SI 1986/1764; the Insolvency Rules 1986, SI 1986/1925 (as amended); the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996 (as amended); the Administration of Insolvent Estates of Deceased Persons Order 1986, SI 1986/1999 (as amended); the Insolvency (Amendment of Subordinate Legislation) Order 1986, SI 1986/2001 (as amended); the Insolvency Fees Order 1986, SI 1986/2030 (revoked: see now the Insolvency Proceedings (Fees) Order 2004, SI 2004/593); the Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986, SI 1986/2123; the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 (as amended); the Insolvency Practitioners Regulations 1990, SI 1990/439 (as amended); the Insolvency Regulations 1994, SI 1994/2507 (as amended); the Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909 (as amended); and the Companies (Disqualification Orders) Regulations 2001, SI 2001/967 (as amended): see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18(1), Sch 10; Interpretation Act 1978 s 17(2)(a).

2 Insolvent Partnerships Order 1994, SI 1994/2421, arts 2(1), 18(1).

3 Ibid art 18(2).

4 *Practice Direction--Insolvency Proceedings* para 1.1(5).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1168 Application of subordinate legislation and practice direction

NOTE 1--SI 1994/2421 Sch 10 amended: SI 2005/1516. SI 2004/593 amended: SI 2005/544, SI 2006/561, SI 2007/521, SI 2008/714, SI 2009/645.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1169. Voluntary arrangement of insolvent partnership.

(2) VOLUNTARY ARRANGEMENTS

(i) Partnerships

1169. Voluntary arrangement of insolvent partnership.

The provisions of the Insolvency Act 1986 relating to company voluntary arrangements¹ apply, with modifications, in relation to an insolvent partnership².

¹ ie the Insolvency Act 1986 s 1A, Sch A1 (as added and amended): see para 71 et seq ante. As to voluntary arrangements of members of insolvent partnerships see para 1191 post.

² Insolvent Partnerships Order 1994, SI 1994/2421, art 4(1) (substituted by SI 2002/2708). For the purposes of the provisions of the Insolvency Act 1986 applied by the Insolvent Partnerships Order 1994, SI 1994/2421, art 4(1) (as substituted), the following provisions of the Insolvency Act 1986, in so far as they relate to company voluntary arrangements, also apply in relation to insolvent partnerships: s 233 (as amended) (supplies of gas, water, electricity etc: see para 140 ante); s 247(1) (as amended) (meaning of 'insolvency': see para 146 note 1 ante; and COMPANIES vol 15 (2009) PARA 1337); s 247(2) (meaning of 'go into liquidation': see para 9 note 3 ante); s 248 (meaning of 'secured creditor' etc: see para 109 note 10 ante); s 249 (meaning of 'connected' with a company: see para 5 ante); s 251 (expressions used generally); Pt XII (ss 386, 387) (as amended) (preferential debts: see para 763 ante); Pt XIII (ss 388-398) (as amended) (insolvency practitioners and their qualification: see para 8 et seq ante); s 411 (as amended) (company insolvency rules: see para 1041 ante); s 413 (as amended) (Insolvency Rules Committee: see para 1041 ante); s 414 (fees orders: see para 1106 ante); s 419 (regulations for purposes of Pt XIII (ss 388-398) (as amended): see para 1041 ante); and Pts XVI-XIX (ss 423-444) (as amended) (debt avoidance; and miscellaneous provisions): Insolvent Partnerships Order 1994, SI 1994/2421, art 4(2), (3). As to the application to insolvent partnerships of subordinate legislation relating to company voluntary arrangements see art 18; and para 1168 ante.

The amendments to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) set out in the Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, arts 3, 4, 5, 6, 8, 9, 10, and Schs 1 and 2, do not apply where, in relation to a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see para 71 et seq post), as the case may be, a proposal is made by: (1) the members of a partnership, and before 1 January 2003 the intended nominee has endorsed a copy of the written notice of the proposal under the Insolvency Rules 1986, SI 1986/1925 r 1.4(3) (as added) (see para 110 ante); (2) the liquidator or the administrator (acting as nominee), and before 1 January 2003 the liquidator or administrator (as the case may be) has sent out a notice summoning the meetings under the Insolvency Act 1986 s 3 as required by the Insolvency Rules 1986, SI 1986/1925, r 1.11 (see para 117 ante); or (3) the liquidator or the administrator of a partnership (not acting as nominee), and before 1 January 2003 the intended nominee has endorsed a copy of the written notice of the proposal under r 1.12(2) (see para 118 ante): Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, art 11(1). Where, by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended), provisions of the Insolvency Act 1986 apply in any such case, those provisions continue to have effect as if the Insolvent Partnerships (Amendment)(No 2) Order 2002, SI 2002/2708, had not been made: art 11(3).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1170. Meaning of 'voluntary arrangement', 'the proposal', 'the nominee', and 'the supervisor'.

1170. Meaning of 'voluntary arrangement', 'the proposal', 'the nominee', and 'the supervisor'.

A voluntary arrangement under the Insolvency Act 1986¹ is a composition in satisfaction of an insolvent partnership's debts or a scheme of arrangement of the partnership's affairs².

For the purposes of the provisions relating to voluntary arrangements³, a proposal is a proposal to an insolvent partnership and its creditors for a voluntary arrangement which provides for some person ('the nominee') to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation⁴. The nominee must be a person who is qualified to act as an insolvency practitioner or authorised to act as nominee in relation to the insolvent partnership⁵.

Once a voluntary arrangement is approved and takes effect, the person supervising its implementation is known as 'the supervisor' of the voluntary arrangement⁶.

¹ I.e. the Insolvency Act 1986 Pt I (ss 1-7B) (as amended), applied with modifications: see paras 71 et seq ante, 1171 et seq post. See also note 2 infra.

² Insolvency Act 1986 s 1(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 1(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

A reference to an insolvent partnership in the Insolvency Act 1986 Pt I (as amended) (see para 1169 ante) includes a reference to an insolvent partnership in relation to which a proposal for a voluntary arrangement may be made by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3 (see para 48 ante): Insolvency Act 1986 s 1(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1(4) (as so substituted).

³ See note 1 supra.

⁴ Insolvency Act 1986 s 1(1), (2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1(1), (2) (as substituted: see note 2 supra).

⁵ Insolvency Act 1986 s 1(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1(2) (as substituted: see note 2 supra). As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post. As to persons authorised to act as nominee see para 11 ante.

⁶ See the Insolvency Act 1986 s 7(2) (as amended); and para 1184 et seq post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1171. Who may propose an arrangement.

1171. Who may propose an arrangement.

A proposal for a voluntary arrangement¹ may be made by the members² of an insolvent partnership (other than one for which an administration order is in force, or which is being wound up as an unregistered company, or in respect of which an order has been made by virtue of the provisions³ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition)⁴. Such a proposal may also be made, where an administration order is in force in relation to the partnership, by the administrator; and, where the partnership is being wound up as an unregistered company, by the liquidator; and, where an order has been made by virtue of the provisions mentioned above⁵, by the trustee of the partnership⁶.

1 For the meaning of 'voluntary arrangement' see para 1170 ante.

2 For these purposes, 'member' means a member of a partnership and any other person who is liable as a partner within the meaning of the Partnership Act 1890 s 14 (see PARTNERSHIP vol 79 (2008) PARAS 24, 26): Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1).

3 *le ibid* art 11: see para 1266 post.

4 Insolvency Act 1986 s 1(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 1(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

5 See note 3 *supra*.

6 Insolvency Act 1986 s 1(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 1(3) (as substituted: see note 4 *supra*). For these purposes, 'trustee of the partnership' means a person authorised by order made by virtue of art 11 (see para 1266 post) to wind up the business of an insolvent partnership and to administer its property: art 2(1).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1172. Moratorium.

1172. Moratorium.

Where the members of an eligible insolvent partnership intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the insolvent partnership¹.

Certain provisions of the Insolvency Act 1986 relating to a moratorium where directors of a company propose a voluntary arrangement² apply in relation to a moratorium where members of an insolvent partnership propose a voluntary arrangement³. With certain exceptions⁴, these provisions have effect with respect to: (1) insolvent partnerships eligible for a moratorium⁵; (2) the procedure for obtaining such a moratorium; (3) the effects of such a moratorium; and (4) the procedure applicable⁶ in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force⁷.

Certain of the provisions of the Insolvency Act so applied are modified in their application in relation to a moratorium where members of an insolvent partnership propose a voluntary arrangement⁸.

¹ Insolvency Act 1986 s 1A(1) (s 1A added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 1A(1) (Sch 1 substituted by SI 2002/2708). As to eligible insolvent partnerships see para 1173 post. The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see paras 1169 ante, 1173 post.

² In the Insolvency Act 1986 Sch A1 (as added and amended): see para 71 et seq ante.

³ Insolvency Act 1986 s 1A(2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1A(2) (as substituted: see note 1 supra).

⁴ The exceptions are:

93 (1) certain provisions which are modified in their application in relation to insolvent partnerships (see the text and note 9 infra);

94 (2) the Insolvency Act 1986 Sch A1 paras 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, 5, 7(4), 8(8), 32(7), 34(2), 41(5), 45 (as added and amended) do not apply (Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1A(4) (as substituted: see note 1 supra));

95 (3) an insolvent partnership is not liable to a fine under the Insolvency Act 1986 Sch A1 para 16(2), 17(3), 18(3), 19(3), 22 or 23(1) (as added and amended); but an officer of an insolvent partnership may be liable to imprisonment or a fine under these provisions in the same manner as an officer of a company (Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1A(5), (6) (as so substituted));

96 (4) in the application to insolvent partnerships of the Insolvency Act 1986 Sch A1 (as added and amended), and the application of the entries in Sch 10 (as amended) relating to offences under Sch A1 (as added and amended): (a) references to the directors or members of a company are to be construed as references to the members of an insolvent partnership; (b) references to officers of a company are to be construed as references to the officers of an insolvent partnership; (c) references to a meeting of a company are to be construed as references to a meeting of the members of an insolvent partnership; and (d) references to a floating charge are to be construed as references to a floating charge created under the Agricultural Credits Act 1928 s 5 (as amended) (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1330) (Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1A(7) (as so substituted)).

5 le a moratorium under the Insolvency Act 1986 Sch A1 (as added, amended and modified): see para 73 et seq ante.

6 le the procedure applicable in place of ibid ss 2-6, 7 (as amended and modified): see para 1173 et seq post.

7 Ibid s 1A(2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1A(2) (as substituted: see note 1 supra).

8 Ibid Sch 1 Pt I para 1A(3) (as substituted: see note 1 supra). The provisions which are modified are those of the Insolvency Act 1986 Sch A1 paras 3, 4, 12, 20, 37, 40, 42 (as added): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 1A(3), Sch 1 Pt II (as so substituted). As to the modified provisions see para 1173 et seq post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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1173. Moratorium: eligible insolvent partnerships.

An insolvent partnership is eligible for a moratorium if it meets the following requirements, unless it falls within specified exclusions¹.

The requirements are that an insolvent partnership meets two or more of the following qualifying conditions in the period of the year ending with the date of filing or in the tax year of the insolvent partnership which ended last before that date²: (1) turnover of not more than £2.8 million; (2) assets of not more than £1.4 million; and (3) no more than 50 employees³.

An insolvent partnership is excluded from being eligible for a moratorium if, on the date of filing: (a) an administration order is in force in relation to the insolvent partnership; (b) the insolvent partnership is being wound up as an unregistered company⁴; (c) there is an agricultural receiver of the insolvent partnership; (d) a voluntary arrangement has effect in relation to the insolvent partnership; (e) there is a provisional liquidator of the insolvent partnership; (f) a moratorium has been in force for the insolvent partnership at any time during the period of 12 months ending with the date of filing and no voluntary arrangement had effect at the time at which the moratorium came to an end or a voluntary arrangement which had effect at any time within that period has come to an end prematurely⁵; (g) a voluntary arrangement which had effect pursuant to a proposal⁶ has come to an end prematurely and during the period of 12 months ending with the date of filing an order has been made by the court under its powers following approval of a voluntary arrangement⁷; or (h) an order has been made by virtue of the provisions⁸ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition⁹.

1 Insolvency Act 1986 s 1A, Sch A1 para 2(1) (s 1A, Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2, 4); Insolvent Partnerships Order 1994, SI 1994/2421, art 4(1) (substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 (as substituted): see para 1169 ante.

The specified exclusions are: (1) those contained in the Insolvency Act 1986 Sch A1 para 2(2) (as added and amended) (see para 73 text and note 11 ante); and (2) those contained in Sch A1 para 4 (as added and amended) (see the text to notes 4, 9 infra).

2 For these purposes, 'date of filing' means the date on which the documents for the time being referred to in *ibid* Sch A1 para 7(1) (as added) (see para 77 ante) are filed or lodged with the court: Sch A1 para 1 (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, art 4(1) (as substituted: see note 1 supra).

3 Insolvency Act 1986 Sch A1 para 3(1), (2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 3(1)-(3) (Sch 1 substituted by SI 2002/2708).

For these purposes: (1) the total of turnover is the amount which is or would be, as the case may be, entered as turnover in the partnership's tax return; (2) the total of assets is the amount which (a) in the case of the period being in the year ending with the date of filing (see the text and note 2 supra), is entered in the partnership's statement of affairs which must be filed with the court under the Insolvency Act 1986 Sch A1 para 7(1)(b) (as added) (see para 77 ante); or (b) in the case of the period being in the tax year of the insolvent partnership which ended last before the date of filing, would be entered in the partnership's statement of affairs had it prepared such a statement on the last day of the period to which the amount for turnover is calculated for the purposes of head (1) supra; (3) the number of employees is the average number of persons employed by the insolvent partnership (a) in the case of the period being in the year ending with the date of filing (see text and

note 2 supra), in the period ending with the date of filing; or (b) in the case of the period being in the tax year of the insolvent partnership which ended last before the date of filing, in the period to which the amount for turnover is calculated for the purposes of head (1) supra: Sch A1 para 3 (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 3(4) (as so substituted).

Where the period covered by the qualifying conditions in respect of the insolvent partnership is not a year the total turnover of not more than £2.8 million is to be proportionately adjusted: Insolvency Act 1986 Sch A1 para 3 (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 3(5) (as so substituted).

The average number of persons employed by the insolvent partnership is to be calculated: (i) by ascertaining the number of persons employed by it under contracts of service for each month of the year (whether throughout the month or not); (ii) by adding those figures together; and (iii) by dividing the resulting figure by the number of months during which persons were so employed by it during the year: Sch 1 Pt II para 3(6) (as so substituted).

For these purposes, 'tax return' means a return under the Taxes Management Act 1970 s 12AA (as added); and 'tax year' means the 12 months beginning with 6 April in any year: Insolvency Act 1986 Sch A1 para 3 (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 3(7) (as so substituted).

4 This provision does not apply to an insolvent partnership which, by reason of a winding up order made after the date for filing, is treated as being wound up on that date: Insolvency Act 1986 Sch A1 para 4(2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 4(2) (as substituted: see note 3 supra).

5 A voluntary arrangement the approval of which has taken effect under the Insolvency Act 1986 s 4A (as added) (see para 1182 post) or Sch A1 para 36 (as added) (see para 1176 post) comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all the persons bound by the arrangement by virtue of s 5(2)(b)(i) (as substituted and amended) (see para 131 ante) or, as the case may be, Sch A1 para 37(2)(b)(i) (as added) (see para 1176 post): s 7B (added by the Insolvency Act 2000 s 2(a), Sch 2 Pt I paras 1, 10); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 7B (as substituted: see note 3 supra).

6 le a proposal under the Insolvency Act 1986 s 1(3) (as substituted): see para 1171 ante.

7 le under ibid s 5(3) (as amended): see para 1183 post.

8 le under the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 post.

9 Insolvency Act 1986 Sch A1 para 4(1) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 4(1) (as substituted: see note 3 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1174. Moratorium: effect on creditors.

1174. Moratorium: effect on creditors.

During the period for which a moratorium is in force for an insolvent partnership:

- 1486 (1) no petition may be presented for the winding up of the insolvent partnership as an unregistered company¹;
- 1487 (2) no meeting of the members of the partnership may be called or requisitioned except with the consent of the nominee or the leave of the court and subject, where the court gives leave, to such terms as the court may impose²;
- 1488 (3) no order may be made for the winding up of the insolvent partnership as an unregistered company³;
- 1489 (4) no petition for an administration order⁴ in relation to the insolvent partnership may be presented;
- 1490 (5) no agricultural receiver⁵ of the partnership may be appointed except with the leave of the court and subject to such terms as the court may impose;
- 1491 (6) no landlord or other person to whom rent is payable may exercise any rights of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership⁶ in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose;
- 1492 (7) no other steps may be taken to enforce any security⁷ over the partnership property⁸, or to repossess goods in the possession, under any hire-purchase agreement⁹, of one or more officers of the partnership in their capacity as such, except with the leave of the court and subject to such terms as the court may impose;
- 1493 (8) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the partnership or the partnership property, except with the leave of the court and subject to such terms as the court may impose;
- 1494 (9) no petition may be presented, and no order may be made, by virtue of the provisions¹⁰ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition; and
- 1495 (10) no application or order may be made in respect of the insolvent partnership under the provisions of the Partnership Act 1890¹¹ relating to the dissolution of a partnership by the court¹².

Where a petition, other than an excepted petition¹³, for the winding up of the insolvent partnership has been presented before the beginning of the moratorium, the provisions¹⁴ relating to the avoidance of property dispositions after the commencement of the winding up do not apply in relation to any disposition of partnership property, any transfer of an interest in the insolvent partnership or alteration in the status of a member of the partnership made during the moratorium¹⁵.

1 These provisions do not apply to an excepted petition: Insolvency Act 1986 s 1A, Sch A1 para 12(4) (s 1A, Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2, 4); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 12(3) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

For these purposes, 'excepted petition' means a petition under: art 7(1) (as amended) presented by the Secretary of State on the grounds mentioned in the Insolvency Act 1986 s 124A(b), (c) (d) (as added and amended) (see para 444 ante); the Financial Services Act 1986 s 72 (repealed) on the ground mentioned in s 72(b) (repealed); the Banking Act 1987 s 92 (repealed) on the ground mentioned in s 92(1)(b) (repealed); or the Financial Services and Markets Act 2000 s 367 on the ground mentioned in s 367(3)(b) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497); Insolvency Act 1986 Sch A1 para 12 (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 12(4) (as so substituted). As to the Secretary of State see para 11 note 10 ante.

2 Where an excepted petition has been presented before the beginning of the moratorium or is presented during the moratorium, these provisions do not apply to proceedings on the petition: Insolvency Act 1986 Sch A1 para 12(4) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 12(3) (as substituted: see note 1 supra).

3 See note 2 supra.

4 For the meaning of 'administration order' see para 1193 post.

5 For the meaning of 'agricultural receiver' see para 1196 note 1 post.

6 For the meaning of 'officer' in relation to a partnership see para 1197 note 8 post.

7 For these purposes, 'security' means any mortgage, charge lien or other security: Insolvency Act 1986 s 248(b); Insolvent Partnerships Order 1994, SI 1994/2421, art 4(2), (3).

8 For the meaning of 'partnership property' see para 1179 note 4 post.

9 For these purposes, 'hire-purchase agreement' includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement: Insolvency Act 1986 Sch A1 para 1 (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, art 4(1) (substituted by SI 2002/2708). For these purposes, 'hire-purchase agreement' and 'conditional sale agreement' have the same meanings as in the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) paras 93, 95); Insolvency Act 1986 s 436; Insolvent Partnerships Order 1994, SI 1994/2421, art 4(2), (3). 'Chattel leasing agreement' means an agreement for the bailment (or, in Scotland, the hiring) of goods which is capable of subsisting for more than three months: Insolvency Act 1986 s 251; Insolvent Partnerships Order 1994, SI 1994/2421, art 4(2), (3). 'Retention of title agreement' means an agreement for the sale of goods to a partnership, being an agreement: (1) which does not constitute a charge on the goods; but (2) under which, if the seller is not paid and the partnership is wound up, the seller will have priority over all other creditors of the partnership as respects the goods or any property representing the goods: Insolvency Act 1986 s 251; Insolvent Partnerships Order 1994, SI 1994/2421, art 4(2), (3).

10 *Ie* under *ibid* art 11: see para 1266 post.

11 *Ie* under the Partnership Act 1890 s 35 (as amended): see PARTNERSHIP vol 79 (2008) PARAS 186-190.

12 Insolvency Act 1986 Sch A1 para 12(1) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 12(1) (as substituted: see note 1 supra).

13 See note 1 supra.

14 *Ie* the Insolvency Act 1986 s 127 (as amended) (see para 700 ante). As to the application of the provisions of the Insolvency Act 1986 to the winding up of insolvent partnerships see para 1204 et seq post.

15 Insolvency Act 1986 Sch A1 para 12(2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 12(2) (as substituted: see note 1 supra). These provisions also apply in the period of time mentioned in para 1176 head (1) post (*ie* the 28-day period after report is made to the court): Insolvency Act 1986 Sch A1 para 12(2) (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 12(2) (as so substituted).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1174 Moratorium: effect on creditors

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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1175. Moratorium: disposal of charged property.

In relation to an insolvent partnership for which a moratorium is in force, the following provisions apply where any partnership property of the insolvent partnership is subject to a security or any goods are in the possession of one or more officers of the partnership in their capacity as such under a hire-purchase agreement¹.

If the holder of the security consents, or the court gives leave, the insolvent partnership may dispose of the property as if it were not subject to the security². Where property subject to a security which, as created, was a floating charge is so disposed of, the holder of the security has the same priority in respect of any partnership property directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security³.

If the owner of the goods consents, or the court gives leave, the insolvent partnership may dispose of the goods as if all the rights of the owner under the hire-purchase agreement were vested in the members of the partnership⁴.

In the case of a disposal under these provisions of any property subject to a security other than a security which, as created, was a floating charge or of any goods in the possession of one or more officers of the partnership in their capacity as such under a hire-purchase agreement, it must be a condition of any such consent or leave, as the case may be, that:

1496 (1) the net proceeds of the disposal; and

1497 (2) where those proceeds are less than such amount as may be agreed, or determined by the court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

are to be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement⁵. Where a condition so imposed relates to two or more securities, the condition requires that the net proceeds of the disposal and, if applicable, the other sums referred to above, be applied towards discharging the sums secured by those securities in the order of their priorities⁶.

1 Insolvency Act 1986 s 1A, Sch A1 para 20(1) (s 1A, Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2, 4); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 20(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

For the meaning of 'partnership property' see para 1179 note 4 post. For the meaning of 'security' see para 1174 note 7 ante. For the meaning of 'officer' in relation to a partnership see para 1197 note 8 post. For the meaning of 'hire-purchase agreement' see para 1174 note 9 ante.

2 Insolvency Act 1986 Sch A1 para 20(2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 20(2) (as substituted: see note 1 supra).

3 Insolvency Act 1986 Sch A1 para 20(4) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 20(4) (as substituted: see note 1 supra). For these purposes, 'floating charge' means a floating charge created under the Agricultural Credits Act 1928 s 5 (as amended) (see AGRICULTURAL

PRODUCTION AND MARKETING vol 1 (2008) PARA 1330): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 20(8) (as so substituted).

4 Insolventy Act 1986 Sch A1 para 20(3) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 20(3) (as substituted: see note 1 supra).

5 Insolventy Act 1986 Sch A1 para 20(5), (6) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 20(5), (6) (as substituted: see note 1 supra).

6 Insolventy Act 1986 Sch A1 para 20(7) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 20(7) (as substituted: see note 1 supra).

UPDATE

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The terminology used in the Insolventy Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

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1176. Moratorium: effect of approval of voluntary arrangement.

Where, following a moratorium in relation to an insolvent partnership, a decision approving a voluntary arrangement has effect¹, the approved voluntary arrangement takes effect as if made by members of the partnership at the creditors' meeting, and binds every person who was entitled to vote at that meeting, whether or not he was present or represented at it, or would have been so entitled if he had had notice of it, as if he were a party to the voluntary arrangement².

Where, before the moratorium, a petition was presented for the winding up of the partnership as an unregistered company or a petition was presented by virtue of the provisions³ relating to insolvency proceedings not involving the winding up of an individual partnership as an unregistered company where individual members present a joint bankruptcy petition, other than an excepted petition⁴, the court must dismiss the petition⁵. The court may not dismiss any such petition: (1) at any time before the end of the period of 28 days beginning with the first day on which each of the reports⁶ of the result of the meetings has been made to the court; or (2) at any time when an application challenging the decisions of the meetings⁷ or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought⁸.

1 Ie under the Insolvency Act 1986 s 1A, Sch A1 para 36 (as added).

2 Ibid Sch A1 para 37(1), (2) (Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 4); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 37(1), (2) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

As to the rules relating to notice of the meetings see the Insolvency Rules 1986, SI 1986/1925, rr 1.9, 1.11; and paras 115, 117 ante. As to the rules relating to entitlement to vote see r 1.17 (as substituted), r 1.18 (as amended); and paras 124, 126 ante. As to the conduct of meetings see rr 1.13-1.22, 1.24 (as amended); and para 120 et seq ante.

If, when the arrangement ceases to have effect, any amount payable under the arrangement has not been paid to a person bound by virtue of these provisions, and the arrangement did not come to an end prematurely, the insolvent partnership at that time becomes liable to pay to that person the amount payable under the arrangement: Insolvency Act 1986 Sch A1 para 37(3) (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 37(3) (as so substituted). For the meaning of 'arrangements coming to an end prematurely' see para 1173 ante.

3 Ie ibid art 11: see para 1266 post.

4 Ie an excepted petition within the meaning of the Insolvency Act 1986 Sch A1 para 12 (as added): see para 1174 note 1 ante.

5 Ibid Sch A1 para 37(4) (as added: see note 2 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 37(4) (as substituted: see note 2 supra).

6 Ie the reports required by the Insolvency Act 1986 Sch A1 para 30(3) (as added) (see para 96 ante).

7 Ie under ibid Sch A1 para 38 (as added) (see para 107 ante).

8 Ibid Sch A1 para 37(5) (as added: see note 2 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 37(5) (as substituted: see note 2 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in [PARA 2 NOTE 5](#).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1177. Moratorium: challenge of actions of officers of insolvent partnership.

1177. Moratorium: challenge of actions of officers of insolvent partnership.

In relation to acts or omissions of the officers of a partnership¹ during a moratorium, a creditor or member of the insolvent partnership may apply to the court on the ground: (1) that the partnership's affairs and business and partnership property² are being or have been managed by the officers of the partnership in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members, including at least the petitioner; or (2) that any actual or proposed act or omission of the officers of the partnership is or would be so prejudicial³. Such an application may be made during or after the moratorium⁴.

On any such application, the court may make such order as it thinks fit for giving relief in respect of the matters complained of, adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit⁵. Any such order may in particular: (a) regulate the management by the officers of the partnership of the partnership's affairs and business and partnership property during the remainder of the moratorium; (b) require the officers of the partnership to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do; (c) require the summoning of a meeting of creditors or members of the partnership for the purpose of considering such matters as the court may direct; (d) bring the moratorium to an end and make such consequential provision as the court thinks fit⁶. In making any such order, the court must have regard to the need to safeguard the interests of persons who have dealt with the insolvent partnership in good faith and for value⁷.

In relation to any time when, in pursuance of a petition presented before the moratorium came into force:

- 1498 (i) an administration order is in force in relation to the insolvent partnership; or
- 1499 (ii) the insolvent partnership is being wound up as an unregistered company;
- or
- 1500 (iii) an order has been made by virtue of the provisions⁸ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition,

no application for an order under these provisions may be made by a creditor or member of the insolvent partnership; but such an application may be made instead by the administrator or, as the case may be, trustee or liquidator⁹.

1 For the meaning of 'officer' in relation to a partnership see para 1197 note 8 post.

2 For the meaning of 'partnership property' see para 1179 note 4 post.

3 Insolvency Act 1986 s 1A, Sch A1 para 40(1), (2) (s 1A, Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2, 4); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 40(1), (2) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

4 Insolvency Act 1986 Sch A1 para 40(3) (as added: see note 3 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 40(3) (as substituted: see note 3 supra).

5 Insolvency Act 1986 Sch A1 para 40(4) (as added: see note 3 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 40(4) (as substituted: see note 3 supra).

6 Insolvency Act 1986 Sch A1 para 40(5) (as added: see note 3 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 40(5) (as substituted: see note 3 supra).

7 Insolvency Act 1986 Sch A1 para 40(6) (as added: see note 3 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 40(6) (as substituted: see note 3 supra).

8 *le ibid* art 11: see para 1266 post.

9 *Ibid* Sch 1 Pt II para 40(7) (as substituted: see note 3 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1178. Moratorium: offences.

1178. Moratorium: offences.

If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for an insolvent partnership or any of its members¹, a person who is an officer of an insolvent partnership² or an officer, which for this purpose includes a shadow director, of a corporate member³ in relation to which a voluntary arrangement is proposed:

- 1501 (1) makes any false representation; or
- 1502 (2) fraudulently does, or omits to do, anything,

he commits an offence⁴. These provisions apply even if no moratorium or extension is obtained⁵. A person guilty of such an offence is liable to conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁶.

1 For these purposes, a moratorium in the case of an individual means the effect of an application for, or the making of an interim order under the Insolvency Act 1986 Pt VIII (ss 252-263G) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY): s 1A, Sch A1 para 42(1) (s 1A, Sch A1 added by the Insolvency Act 2000 s 1, Sch 1 paras 1, 2, 4); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 42(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

2 For the meaning of 'officer' in relation to a partnership see para 1197 note 8 post.

3 For the meaning of 'corporate member' in relation to a partnership see para 1191 note 1 post. For the meaning of 'shadow director' see para 5 note 3 ante.

4 Insolvency Act 1986 Sch A1 para 42(1) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 42(1) (as substituted: see note 1 supra).

5 Insolvency Act 1986 Sch A1 para 42(2) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II para 42(2) (as substituted: see note 1 supra).

6 Insolvency Act 1986 Sch A1 para 42(4) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt II para 42(3) (as substituted: see note 1 supra). See also the Insolvency Act 1986 s 430, Sch 10. As to the statutory maximum see para 10 note 1 ante. As to the prosecution of delinquent officers of the partnership see para 1190 post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1179. Procedure where nominee is not the liquidator, administrator or trustee and there is no moratorium.

1179. Procedure where nominee is not the liquidator, administrator or trustee and there is no moratorium.

Where the intended nominee¹ is not the liquidator, administrator or trustee of the insolvent partnership, and the members of the partnership do not propose steps to obtain a moratorium² for the insolvent partnership, the following provisions apply³.

For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal must submit to the nominee a document setting out the terms of the proposed voluntary arrangement and a statement of the partnership's affairs containing such particulars of the partnership's creditors and of the partnership's debts and other liabilities and of the partnership property⁴ as may be prescribed and such other information as may be prescribed⁵.

The nominee must, within 28 days, or such longer period as the court may allow, after he is given notice of the proposal for a voluntary arrangement⁶, submit a report to the court stating: (1) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented; (2) whether, in his opinion, meetings of the members of the partnership and of the partnership's creditors should be summoned to consider the proposal; and (3) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held⁷.

The nominee must also state in his report whether there are in existence any insolvency proceedings in respect of the insolvent partnership or any of its members⁸.

The court may:

- 1503 (a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the required report or has died; or
- 1504 (b) on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner⁹, or authorised to act as nominee¹⁰, in relation to the voluntary arrangement¹¹.

1 For the meaning of 'nominee' see para 1170 ante.

2 I.e a moratorium under the Insolvency Act 1986 s 1A (as added), applied with modifications (see para 1172 ante). The provisions of Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 (as substituted): see para 1169 ante.

3 As to the procedure on the proposal where the nominee is not the liquidator, administrator or trustee of the insolvent partnership see the Insolvency Rules 1986, SI 1986/1925, rr 1.2-1.9, 1.12 (as amended); and para 109 et seq ante. As to the application to insolvent partnerships of subordinate legislation relating to company voluntary arrangements see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

4 For these purposes, 'partnership property' has the same meaning as in the Partnership Act 1890: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1).

5 Insolvency Act 1986 s 2(1), (3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 2(1), (4) (Sch 1 substituted by SI 2002/2708). As to the prescribed particulars and information see the Insolvency Rules 1986, SI 1986/1925, rr 1.5, 1.6; and paras 111, 112 ante.

6 As to the notice to be given to the intended nominee see *ibid* r 1.4; and para 110 ante.

7 Insolvency Act 1986 s 2(1), (2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II paras 2(1), (2) (as substituted: see note 5 supra). As to summoning such meetings see para 1180 post.

8 *Ibid* Sch 1 Pt I para 2(1), (3) (as substituted: see note 5 supra).

9 As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post.

10 As to persons authorised to act as nominee see para 11 ante.

11 Insolvency Act 1986 s 2(1), (4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I paras 2(1), (5) (as substituted: see note 5 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1180. Summoning of meetings.

1180. Summoning of meetings.

Where the nominee is not the liquidator, administrator or trustee of the insolvent partnership, and it has been reported to the court that meetings should be summoned to consider the proposal¹, the person making the report must, unless the court otherwise directs, summon those meetings for the time, date and place proposed in the report².

Where the nominee is the liquidator, administrator or trustee of the insolvent partnership, he must summon meetings of the members of the partnership and of the partnership's creditors to consider the proposal for such a time, date and place as he thinks fit³.

The persons to be summoned to a creditors' meeting under these provisions are every creditor of the partnership of whose claim and address the person summoning the meeting is aware⁴.

1 See para 1179 ante.

2 Insolvency Act 1986 s 3(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 3(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

As to the summoning of meetings where the nominee is not the liquidator, administrator or trustee of the insolvent partnership see the Insolvency Rules 1986, SI 1986/1925, rr 1.9, 1.13 (as substituted); and paras 115, 120 ante. As to the application to insolvent partnerships of subordinate legislation relating to company voluntary arrangements see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

3 Insolvency Act 1986 s 3(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 3(2) (as substituted: see note 2 supra). As to the summoning of meetings where the nominee is the liquidator, administrator or trustee of the insolvent partnership see the Insolvency Rules 1986, SI 1986/1925, rr 1.11, 1.13 (as substituted); and paras 117, 120 ante. See also note 2 supra.

4 Insolvency Act 1986 s 3(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 3(3) (as substituted: see note 2 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1181. Decisions and report of meetings.

1181. Decisions and report of meetings.

The meetings of creditors and the partnership summoned¹ to consider the proposal must decide whether to approve the proposed voluntary arrangement, with or without modifications². The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the insolvent partnership³; but they must not include any modification by virtue of which the proposal ceases to be a proposal⁴ for a voluntary arrangement⁵.

A meeting so summoned may not approve any proposal or modification which affects the right of a secured creditor of the partnership to enforce his security, except with the concurrence of the creditor concerned⁶. Nor may a meeting so summoned approve any proposal or modification under which any preferential debt⁷ of the partnership is to be paid otherwise than in priority to such of its debts as are not preferential debts, or a preferential creditor⁷ of the partnership is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt⁸. The meeting may, however, approve such a proposal or modification with the concurrence of the preferential creditor concerned⁹.

Subject to the above provisions, each of the meetings must be conducted in accordance with the Insolvency Rules 1986¹⁰. An approval given at a meeting is not, however, invalidated by any irregularity at or in relation to the meeting¹¹.

After the conclusion of either meeting, the chairman of the meeting must report the result of the meeting to the court; and, immediately after reporting to the court, the chairman of each meeting must also give notice of its result to all those who were sent notice of the meeting in accordance with the rules¹².

1 I.e. the meetings summoned under the Insolvency Act 1986 s 3 (as modified): see para 1180 ante.

2 Ibid s 4(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 4(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

3 As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post.

4 I.e. a proposal such as is mentioned in the Insolvency Act 1986 s 1 (as modified): see para 1171 ante.

5 Insolvency Act 1986 s 4(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(2) (as substituted: see note 2 supra).

6 Insolvency Act 1986 s 4(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(3) (as substituted: see note 2 supra).

7 For these purposes, references to preferential debts and preferential creditors are to be read in accordance with the Insolvency Act 1986 s 386 (as amended) (see para 763 ante): s 4(7); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(7) (as substituted: see note 2 supra).

8 Insolvency Act 1986 s 4(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(4) (as substituted: see note 2 supra).

9 Insolvency Act 1986 s 4(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(4) (as substituted: see note 2 supra).

10 Insolvency Act 1986 s 4(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(5) (as substituted: see note 2 supra). As to the conduct of meetings see the Insolvency Rules 1986, SI 1986/1925, r 1.13-1.22, 1.24 (as amended); and para 120 et seq ante. As to the application to insolvent partnerships of subordinate legislation relating to company voluntary arrangements see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

11 Insolvency Act 1986 s 6(7) (amended by the Insolvency Act 2000 s 2(a), Sch 2 Pt I paras 1, 7, 8); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6(7) (as substituted: see note 2 supra). This is subject to the right to challenge decisions under the Insolvency Act 1986 s 6 (as amended): see para 1187 post.

12 Ibid s 4(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(6) (as substituted: see note 2 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1182. Approval of arrangement.

1182. Approval of arrangement.

As regards a decision¹ with respect to the approval of a proposed voluntary arrangement, the decision has effect if, in accordance with the Insolvency Rules 1986² it has been taken by the meetings of the partnership's members and creditors³ or, subject to any order made by the court under the provisions described below, it has been taken by the creditors' meeting⁴.

If the decision taken by the creditors' meeting differs from that taken by the meeting of the members of the partnership, a member of the partnership may apply to court⁵. Such an application may not be made after the end of the period of 28 days beginning with the day on which the decision was taken by the creditors' meeting or, where the decision of the meeting of the members of the partnership was taken on a later day, that day⁶. On any such application, the court may order the decision of the meetings of the partnership to have effect instead of the decision of the creditors' meeting or make such other order as it thinks fit⁷.

1 le a decision under the Insolvency Act 1986 s 4 (as modified): see para 1181 ante. The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 (as substituted): see para 1169 ante.

2 As to the conduct of meetings see the Insolvency Rules 1986, SI 1986/1925, r 1.13-1.22, 1.24 (as amended); and para 120 et seq ante.

3 le the meetings summoned under the Insolvency Act 1986 s 3 (as modified): see para 1180 ante.

4 Ibid s 4A(1)(2) (added by the Insolvency Act 2000 s 2(a), Sch 2 Pt I paras 1, 5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4A(1), (2) (Sch 1 substituted by SI 2002/2708).

5 Insolvency Act 1986 s 4A(3) (as added: see note 4 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(3) (as substituted: see note 4 supra). Where a member of an insolvent partnership which is regulated makes such an application to the court, the Financial Services Authority is entitled to be heard on the application: Insolvency Act 1986 s 4A(5) (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(5) (as so substituted). For this purpose, 'regulated' in relation to an insolvent partnership means a person who: (1) is, or has been, an authorised person within the meaning of the Financial Services and Markets Act 2000 s 31 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 314); (2) is, or has been, an appointed representative within the meaning of ibid s 39 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 346); or (3) is carrying on, or has carried on, a regulated activity, within the meaning of s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84) in contravention of the general prohibition within the meaning of s 19 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 80): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(7) (as so substituted). As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 4, 6 et seq.

6 Insolvency Act 1986 s 4A(4) (as added: see note 4 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(4) (as substituted: see note 4 supra).

7 Insolvency Act 1986 s 4A(6) (as added: see note 4 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 4(6) (as substituted: see note 4 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1183. Effect of approval.

1183. Effect of approval.

Where a decision approving a voluntary arrangement has effect¹, the approved voluntary arrangement takes effect as if made by the members of the partnership at the creditors' meeting, and binds every person² who had notice of, and was entitled to vote at, that meeting, whether or not he was present or represented at the meeting, or would have been so entitled if he had had notice of it, as if he were a party to the voluntary arrangement³.

If the partnership is being wound up as an unregistered company, or an administration order is in force, or an order is in force by virtue of the provisions⁴ relating to insolvency proceedings not involving the winding up of an insolvent partnership or an unregistered company where individual members present a joint bankruptcy petition, the court may do one or both of the following, namely:

1505 (1) by order:

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1. (a) stay all proceedings in the winding up or in the proceedings under the order made by virtue of such provisions, as the case may be, including any related insolvency proceedings of a member of the partnership in his capacity as such; or
2. (b) discharge the administration order;

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1506 (2) give such directions with respect to the conduct of the winding up, or of the proceedings by virtue of such provisions, or of the administration, as the case may be, and the conduct of any related insolvency proceedings⁵, as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement⁶.

The court may not make any such order:

1507 (i) at any time before the end of the period of 28 days beginning with the first day on which each of the reports⁷ of the result of the meetings has been made to the court; or

1508 (ii) at any time when an application challenging the decisions of the meeting⁸ or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought⁹.

1 Ie under the Insolvency Act 1986 s 4A (as added and modified): see para 1182 ante.

2 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended). As to the rules relating to notice of the meetings see rr 1.9, 1.11; and paras 115, 117 ante. As to the rules relating to entitlement to vote see r 1.17 (as substituted and amended), r 1.18 (as amended); and paras 124, 126 ante. As to the application to insolvent partnerships of subordinate legislation relating to company voluntary arrangements see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

3 Insolvency Act 1986 s 5(1), (2); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I paras 5(1), (2) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

If, when the arrangement ceases to have effect any amount payable under the arrangement has not been paid to a person bound by virtue of these provisions, and the arrangement did not come to an end prematurely, the insolvent partnership at that time becomes liable to pay to that person the amount payable under the arrangement: Insolvency Act 1986 s 5(2A); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 5(2A) (as so substituted). For the meaning of 'arrangements coming to an end prematurely' see para 1173 ante.

4 le the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 post.

5 le as referred to in ibid Sch 1 Pt I para 5(3)(a)(i) (as substituted): see head (1)(a) in the text.

6 Insolvency Act 1986 s 5(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 5(3) (as substituted: see note 3 supra).

7 le the reports required by the Insolvency Act 1986 s 4(6) (as modified): see para 1181 ante.

8 le under ibid s 6 (as modified): see paras 1187-1188 post.

9 Insolvency Act 1986 s 5(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 5(4) (as substituted: see note 3 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1184. The supervisor.

1184. The supervisor.

Where a voluntary arrangement has effect¹, the person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred on the nominee by virtue of the approval given at one or both of the meetings of the partnership's members or creditors², or, where the nominee has been replaced³, on a person other than the nominee, is to be known as the supervisor of the voluntary arrangement⁴.

The supervisor may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and is included among the persons who may apply to the court for the winding up of the partnership as an unregistered company or for an administration order to be made in relation to it⁵.

1 Ie under the Insolvency Act 1986 s 4A (as added and modified): see para 1182 ante.

2 Ie the meetings summoned under *ibid* s 3 (as modified): see para 1180 ante.

3 Ie by virtue of *ibid* s 4(2) (as modified) (see para 1181 ante), or s 2(5) (as modified) (see para 1179 ante).

4 Insolvency Act 1986 s 7(1), (2); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 7(1), (2) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

5 Insolvency Act 1986 s 7(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 7(4) (as substituted: see note 4 *supra*). As to petitions to wind up presented by the supervisor see para 1210 post; as to the court's power to appoint the supervisor as liquidator of the partnership on the making of a winding-up order see para 1234 post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1185. Control by the court.

1185. Control by the court.

If any of the partnership's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and, on the application, the court may:

- 1509 (1) confirm, reverse or modify any act or decision of the supervisor;
- 1510 (2) give him directions; or
- 1511 (3) make such other order as it thinks fit¹.

¹ Insolvency Act 1986 s 7(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 7(3) (substituted by SI 2002/2708). For the analogous provisions in relation to a liquidator see para 1038 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1186. Appointment of supervisor by the court.

1186. Appointment of supervisor by the court.

Whenever it is expedient to appoint a person to carry out the functions of the supervisor, and it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court, the court may make an order appointing a person who is qualified to act as an insolvency practitioner or authorised to act as supervisor in relation to the voluntary arrangement¹, either in substitution for the existing supervisor or to fill a vacancy².

Such power conferred on the court is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons³.

1 As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post.

2 Insolvency Act 1986 s 7(5); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 7(5) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

3 Insolvency Act 1986 s 7(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 7(6) (as substituted: see note 2 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1187. Challenge of decisions.

1187. Challenge of decisions.

An application to the court may be made by any of the persons specified below, on one or both of the following grounds, namely that a voluntary arrangement which has effect¹ unfairly prejudices the interests of a creditor, member or contributory of the partnership or that there has been some material irregularity at or in relation to either of the meetings².

The persons who may so apply to the court are: (1) a person entitled³ to vote at either of the meetings; (2) a person who would have been entitled³ to vote at the creditors' meeting if he had had notice of it; (3) the nominee or any person who has replaced him⁴; and (4) if the partnership is being wound up as an unregistered company or an administration order is in force or an order is in force by virtue of the provisions relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition⁵, the liquidator, administrator or trustee of the partnership⁶.

Such an application may not be made after the end of the period of 28 days beginning with the first day on which each of the reports of the results of the meetings of creditors and members of the partnership⁷ has been made to the court or, in the case of a person who was not given notice of the creditors' meeting, after the end of the 28-day period beginning with the day on which he became aware that the meeting had taken place; but, subject to this, an application made by a person who would have been entitled to vote at the creditors' meeting if had had notice of it, on the ground that the voluntary arrangement prejudices his interests, may be made after the voluntary arrangement has ceased to have effect, unless it came to an end prematurely⁸.

1 Ie under the Insolvency Act 1986 s 4A (as added and modified): see para 1182 ante.

2 Insolvency Act 1986 s 6(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 6(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante. For the meaning of 'contributory' see para 703 ante.

3 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended). As to the rules relating to entitlement to vote see r 1.17 (as substituted and amended), r 1.18 (as amended); and paras 124, 126 ante. As to the application to insolvent partnerships of subordinate legislation relating to company voluntary arrangements see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

4 Ie under the Insolvency Act 1986 s 4(2) (as modified) (see para 1181 ante), or s 2(5) (as modified) (see para 1179 ante).

5 Ie under the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 post.

6 Insolvency Act 1986 s 6(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6(2) (as substituted: see note 2 supra). For the meaning of 'trustee of the partnership' see para 1171 note 6 ante.

7 Ie the reports required by the Insolvency Act 1986 s 4(6) (as modified): see para 1181 ante.

8 Insolvency Act 1986 s 6(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6(3) (as substituted: see note 2 supra). For the meaning of 'arrangements coming to an end prematurely' see para 1173 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1188. Powers of the court.

1188. Powers of the court.

Where, on an application¹, the court is satisfied as to either of the specified grounds for making such an application², it may do one or both of the following, namely:

- 1512 (1) revoke or suspend any decision approving the voluntary arrangement which has effect³ or, where there has been some material irregularity at or in relation to either of the meetings, any approval given by the meeting in question which has effect⁴;
- 1513 (2) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, where there has been some material irregularity at or in relation to either of the meetings, a further meeting of the members of the partnership or, as the case may be, of the partnership's creditors to reconsider the original proposal⁵.

Where, at any time after giving a direction for the summoning of meetings to consider a revised proposal⁶, the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court must revoke the direction and revoke or suspend any decision which has effect⁷ approving the voluntary arrangement⁸.

In a case where the court, on such an application with respect to any meeting, gives a direction⁹, or revokes or suspends an approval¹⁰, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect¹¹.

Except in pursuance of the provisions described above¹², a decision taken at a meeting of creditors or members of the partnership¹³ is not invalidated by any irregularity at or in relation to the meeting¹⁴.

1 Ie under the Insolvency Act 1986 s 6(1)-(3) (as modified): see para 1187 ante.

2 Ie those specified in *ibid* s 6(1) (as modified): see para 1187 ante.

3 Ie under *ibid* s 4A (as added and modified): see para 1182 ante.

4 See note 3 *supra*.

5 Insolvency Act 1986 s 6(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 para 6(4) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

6 Ie under the Insolvency Act 1986 s 6(4)(b) (as modified): see head (2) in the text.

7 See note 3 *supra*.

8 Insolvency Act 1986 s 6(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6(5) (as substituted: see note 5 *supra*).

9 See the text to note 5 *supra*.

10 le under the Insolvency Act 1986 s 6(4)(a) (as modified) (see head (1) in the text) or s 6(5) (as modified) (see the text to note 8 supra).

11 Insolvency Act 1986 s 6(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6(6) (as substituted: see note 5 supra).

12 le the Insolvency Act 1986 s 6(1)-(6) (as modified): see the text and notes 1-11 supra; and para 1187 ante.

13 le meetings summoned under *ibid* s 3 (as modified): see para 1180 ante.

14 Insolvency Act 1986 s 6(7); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6(7) (as substituted: see note 5 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1189. False representations.

1189. False representations.

If, for the purpose of obtaining the approval of the members or creditors of an insolvent partnership or of the members or creditors of any of its members to a proposal for a voluntary arrangement in relation to the partnership or any of its members, a person who is an officer of the partnership¹ or an officer, which for this purpose includes a shadow director, of a corporate member² in relation to which a voluntary arrangement is proposed:

- 1514 (1) makes a false representation; or
- 1515 (2) fraudulently does, or omits to do, anything,

he commits an offence³. These provisions apply even if the proposal is not approved⁴. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁵.

1 For the meaning of 'officer' in relation to a partnership see para 1197 note 8 post.

2 For the meaning of 'corporate member' in relation to a partnership see para 1191 note 1 post. For the meaning of 'shadow director' see para 5 note 3 ante.

3 Insolvency Act 1986 s 6A(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 4, Sch 1 Pt I para 6A(1) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante.

4 Insolvency Act 1986 s 6A(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 6A(2) (as substituted: see note 3 supra).

5 Insolvency Act 1986 s 6A(3), s 430 Sch 10; Insolvent Partnerships Order 1994, SI 1994/2421, art 4(1), Sch 1 Pt I para 6A(3) (as substituted: see note 3 supra). As to the statutory maximum see para 10 note 1 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/(i) Partnerships/1190. Prosecution of delinquent officers of partnership.

1190. Prosecution of delinquent officers of partnership.

Where a moratorium has been obtained for an insolvent partnership¹ or the approval of a voluntary arrangement in relation to an insolvent partnership has taken effect², if it appears to the nominee or supervisor that any past or present officer of the insolvent partnership has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which such officer is criminally liable, the nominee must forthwith report the matter to the Secretary of State and provide the Secretary of State with such information and give him such access to and facilities for inspecting and taking copies of documents, being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question, as the Secretary of State requires³.

Where a prosecuting authority⁴ institutes criminal proceedings following any such report, the nominee or supervisor, and every officer and agent⁵ of the insolvent partnership past or present, other than the defendant, must give the authority all assistance in connection with the prosecution which he is reasonably able to give⁶. The court may, on the application of the prosecuting authority, direct any such person to comply with these provisions if he has failed to do so⁷.

1 Ie under the Insolvency Act 1986 s 1A (as added and modified): see para 1172 ante.

2 Ie under *ibid* s 1A (as added and modified) (see para 1172 ante) or under s 1A, Sch A1 para 36 (as added and modified) (see para 1176 text and note 1 ante).

3 Insolvency Act 1986 s 7A(1), (2) (added by the Insolvency Act 2000 s 2(a), Sch 2 Pt I paras 1, 10); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I para 7A(1), (2) (Sch 1 substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) apply in relation to an insolvent partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 (as substituted): see para 1169 ante. As to the Secretary of State see para 11 note 10 ante.

4 For these purposes, 'prosecuting authority' means the Director of Public Prosecutions or the Secretary of State: Insolvency Act 1986 s 7A(3) (as added: see note 3 supra); Insolvent Partnerships Order 1994, Sch 1 Pt I para 7A(3) (as substituted: see note 3 supra). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq.

5 For these purposes, 'agent' includes any banker or solicitor of the insolvent partnership and any person employed by the insolvent partnership as auditor, whether that person is or is not an officer of the insolvent partnership: Insolvency Act 1986 s 7A(3) (as added: see note 3 supra); Insolvent Partnerships Order 1994, Sch 1 Pt I para 7A(3) (as substituted: see note 3 supra).

6 Insolvency Act 1986 s 7A(3) (as added: see note 3 supra); Insolvent Partnerships Order 1994, Sch 1 Pt I para 7A(3) (as substituted: see note 3 supra).

7 Insolvency Act 1986 s 7A(4) (as added: see note 3 supra); Insolvent Partnerships Order 1994, Sch 1 Pt I para 7A(4) (as substituted: see note 3 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1190 Prosecution of delinquent officers of partnership

NOTES 4-6--For Insolvency Act 1986 s 7A(3) read Insolvency Act 1986 s 7A(8).

NOTE 7--For Insolvency Act 1986 s 7A(4) read Insolvency Act 1986 s 7A(9).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/ (ii) Members of Partnerships/1191. Voluntary arrangements of members of insolvent partnership.

(ii) Members of Partnerships

1191. Voluntary arrangements of members of insolvent partnership.

Where insolvency orders¹ are made against an insolvent partnership and an insolvent member² of that partnership in his capacity as such, Part I of the Insolvency Act 1986³ applies to corporate members and Part VIII of that Act⁴ applies to individual members of that partnership, with the modification that any reference to the creditors of the company or of the debtor, as the case may be, includes a reference to the creditors of the partnership⁵.

This provision is not to be construed as preventing the application of Part I or (as the case may be) Part VIII to any person who is a member of an insolvent partnership, whether or not a winding-up order has been made against that partnership, and against whom an insolvency order has not been made under the Insolvent Partnerships Order 1994 or under the Insolvency Act 1986⁶.

1 For these purposes, 'insolvency order' means: (1) in the case of an insolvent partnership or a corporate member, a winding-up order; and (2) in the case of an individual member, a bankruptcy order: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1). 'Corporate member' means an insolvent member (see note 2 infra) which is a company (art 2(1)); and 'individual member' means an insolvent member who is an individual (art 2(1)).

2 For these purposes, 'insolvent member' means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented: *ibid* art 2(1). 'Insolvency petition' means, in the case of a petition presented to the court against a corporate member, a petition for its winding up by the court, and, in the case of a petition presented to the court against an individual member, a petition for a bankruptcy order to be made against that individual, where, in either case, the petition is presented in conjunction with a petition for the winding up of the partnership by the court as an unregistered company under the Insolvency Act 1986: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1). 'The court' means the court which has jurisdiction to wind up the partnership: art 2(1).

3 *Ie* the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

4 *Ie* *ibid* Pt VIII (ss 252-263) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 83 et seq.

5 Insolvent Partnerships Order 1994, SI 1994/2421, arts 2(1), 5(1).

6 *Ibid* arts 2(1), 5(2).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1192. Administration order in relation to insolvent partnership.

(3) ADMINISTRATION ORDERS

1192. Administration order in relation to insolvent partnership.

The provisions of the Insolvency Act 1986 relating to administration orders, as they were enacted prior to the amendments and repeals made by the Enterprise Act 2002¹, apply in relation to an insolvent partnership, with modifications³.

1 The Insolvency Act 1986 Pt II (ss 8-27) (as amended): see para 146 et seq ante. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3; and see para 72 ante.

2 The provisions which are modified are the Insolvency Act 1986 ss 8-15, Sch 1 (as amended): Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 para 1.

3 See ibid art 6(1). For the purposes of the provisions of the Insolvency Act 1986 applied by the Insolvent Partnerships Order 1994, SI 1994/2421, art 6(1), the following provisions of the Insolvency Act 1986, in so far as they relate to administration orders, also apply in relation to insolvent partnerships:

- 97 (1) s 212 (as amended) (summary remedy against delinquent directors, liquidators etc: see para 688 et seq ante);
- 98 (2) Pt VI (ss 230-246) (as amended) (miscellaneous provisions);
- 99 (3) s 247(1) (as amended) (meaning of 'insolvency': see paras 71 note 2, 146 note 1 ante; and COMPANIES vol 15 (2009) PARA 1337), s 247(2) (meaning of 'go into liquidation': see para 9 note 3 ante), s 248 (meaning of 'secured creditor' etc: see para 109 note 10 ante), s 249 (meaning of 'connected' with a company: see para 5 ante) and s 251 (expressions used generally);
- 100 (4) Pt XIII (ss 388-398) (as amended) (insolvency practitioners and their qualification: see para 8 et seq ante);
- 101 (5) s 411 (as amended) (company insolvency rules: see para 1041 ante), s 413 (as amended) (Insolvency Rules Committee: see para 1041 ante), s 414 (fees orders: see para 1106 ante), s 419 (regulations for the purposes of Pt XIII (ss 388-398) (as amended): see para 1041 ante); and
- 102 (6) Pts XVI-XIX (ss 423-444) (as amended) (debt avoidance; and miscellaneous provisions): Insolvent Partnerships Order 1994, SI 1994/2421, arts 2(1), 6(2), (3).

As to the application to insolvent partnerships of subordinate legislation relating to administration orders see art 18; and para 1168 ante.

The amendments to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended) set out in the Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, art 7 do not apply where a petition for an administration order in relation to an insolvent partnership has been presented before 1 January 2003: art 11(2). Where, by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended), provisions of the Insolvency Act 1986 apply in any such case, those provisions continue to have effect as if the Insolvent Partnerships (Amendment) (No 2) Order 2002, 2002/2708 had not been made: art 11(3).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1193. Administration order.

1193. Administration order.

An administration order is an order directing that, during the period for which the order is in force, the affairs and business of the partnership and the partnership property¹ are to be managed by a person ('the administrator') appointed for the purpose by the court².

1 For the meaning of 'partnership property' see para 1179 note 4 ante.

2 Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 2. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante. For the meaning of 'the court' see para 1191 note 2 ante.

A reference to an insolvent partnership in the Insolvency Act 1986 Pt II (ss 8-27) (as amended) and the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 (as amended) includes a reference to an insolvent partnership in relation to which an administration order may be made by virtue of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3 (see para 48 ante): Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 2 (amended by SI 2002/2708). The amendment made to these provisions does not apply in relation to a petition for an administration order presented before 1 January 2003: see the Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, art 11(2), (3); and para 1192 note 3 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1194. Power of court to make an administration order.

1194. Power of court to make an administration order.

The court¹ may make an administration order² in relation to a partnership, if it is satisfied that the partnership is or is likely to become unable to pay its debts³, and it considers that the making of such an order would be likely to achieve one or more of the following purposes⁴:

- 1516 (1) the survival of the whole or any part of the undertaking of the partnership as a going concern;
- 1517 (2) the approval of a voluntary arrangement⁵;
- 1518 (3) a more advantageous realisation of the partnership property⁶ than would be effected on a winding up⁷.

The order must specify the purpose or purposes for which it is made⁷.

An administration order may not, however, be made in relation to a partnership after an order has been made for it to be wound up by the court as an unregistered company⁸, nor after an order has been made in relation to it by virtue of the provisions⁹ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition¹⁰

1 For the meaning of 'the court' see para 1191 note 2 ante.

2 For the meaning of 'administration order' see para 1193 ante.

3 Ie within the meaning given to that expression by the Insolvency Act 1986 s 222, s 223 or s 224: see para 1152 ante. A partnership may be insolvent even if the value of one of the partner's assets exceeds the value of the partnership's liabilities: *Re HS Smith and Sons* (1999) Times, 6 January.

An authorised deposit taker which defaults on an obligation to pay any sum due and payable in respect of a relevant deposit is deemed unable to pay its debts: Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 2 (amended by SI 2001/3649). The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

For these purposes, 'authorised deposit taker' means a person, being a partnership, which has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 348-361) to accept deposits, other than a person who has such permission only for the purpose of carrying on another regulated activity in accordance with that permission; and 'relevant deposit' and 'authorised deposit taker' must be read with s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84), any relevant order under s 22 and Sch 2 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 84, 85); but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded: Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 2 (amended by SI 2001/3649).

4 Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 2 (amended by SI 2001/3649).

5 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) and the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I paras 1-7B (as substituted): see para 1169 et seq ante.

6 For the meaning of 'partnership property' see para 1179 note 4 ante.

7 Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 2.

8 As to the winding up of an insolvent partnership as an unregistered company see para 1204 et seq post.

9 le under the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 post.

10 Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 2 (amended by SI 2001/3649). An administration order may not be made against a partnership if it has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 348-361) to effect or carry out contracts of insurance in the United Kingdom or if it continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987, but is not an authorised deposit taker (see note 3 supra): Insolvency Act 1986 s 8; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 2 (amended by SI 2001/3649; SI 2002/1555). The Banking Act 1987 was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649. For the meaning of 'United Kingdom' see para 12 note 2 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1195. Petition for administration order.

1195. Petition for administration order.

An application to the court¹ for an administration order² must be by petition presented either by the members of the insolvent partnership in their capacity as such, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by all or any of those parties, together or separately³.

1 For the meaning of 'the court' see para 1191 note 2 ante.

2 For the meaning of 'administration order' see para 1193 ante.

3 Insolvency Act 1986 s 9; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 3. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

For the prescribed form of petition for an administration order see the Insolvent Partnerships Order 1994, SI 1994/2421, art 17, Sch 9 Form 1 (substituted by SI 2002/1308). As to the use of forms see para 1296 post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1196. Notice and withdrawal of petition.

1196. Notice and withdrawal of petition.

Where a petition is presented to the court, notice of the petition must be given forthwith to any person who has appointed, or is or may be entitled to appoint, an agricultural receiver¹ of the partnership and to such other persons as may be prescribed². A petition may not be withdrawn except with the leave of the court³.

1 For these purposes, 'agricultural receiver' means a receiver appointed under an agricultural charge within the meaning of that expression in the Agricultural Credits Act 1928 (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1328 et seq): Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1). As to the court's powers on the hearing of a petition where there is an agricultural receiver of the partnership see para 1198 post; and as to the right to appoint an agricultural receiver after presentation of a petition see para 1197 post.

2 Insolvency Act 1986 s 9; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 3. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

As to the prescribed persons see the Insolvency Rules 1986, SI 1986/1925, r 2.7 (as substituted); and para 153 ante. As to the application to insolvent partnerships of subordinate legislation relating to administration orders see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

3 Insolvency Act 1986 s 9; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 3.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1197. Effect of presentation of petition.

1197. Effect of presentation of petition.

During the period beginning with the presentation of a petition¹ for an administration order² and ending with the making of such an order or the dismissal of the petition³:

- 1519 (1) no order may be made for the winding up of the insolvent partnership, nor may any order be made in respect of the partnership by virtue of the provisions⁴ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition, or under the provisions⁵ relating to the dissolution of a partnership by the court⁶;
- 1520 (2) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property⁷ or let to one or more officers of the partnership⁸ in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose⁹;
- 1521 (3) no steps may be taken to enforce any security¹⁰ over the partnership's property, or to repossess goods in the partnership's possession under any hire-purchase agreement¹¹, conditional sale agreement, chattel leasing agreement¹² or retention of title agreement¹³ of one or more of the officers of the partnership in their capacity as such, except with the leave of the court and subject to such terms as the court may impose¹⁴; and
- 1522 (4) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the partnership or the partnership property, except with the leave of the court and subject to such terms as the court may impose¹⁵.

Nothing in these provisions requires the leave of the court:

- 1523 (a) for the presentation of a petition for the winding up of the partnership¹⁶;
- 1524 (b) for the presentation of a petition by virtue of the provisions¹⁷ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition;
- 1525 (c) for the appointment of an agricultural receiver¹⁸ of the partnership; or
- 1526 (d) for the carrying out by such a receiver, whenever appointed, of any of his functions¹⁹.

Where a petition for an administration order is presented at a time when there is an agricultural receiver of the partnership, and the person by or on whose behalf the receiver was appointed has not consented to the making of the order, the period mentioned above is deemed not to begin unless and until that person so consents²⁰.

1 As to the presentation of a petition see para 1195 ante.

- 2 For the meaning of 'administration order' see para 1193 ante.
- 3 See para 1198 post.
- 4 le the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 post.
- 5 le under the Partnership Act 1890 s 35 (as amended): see PARTNERSHIP vol 79 (2008) PARAS 186-190.
- 6 Insolvency Act 1986 s 10; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 4. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.
- 7 For the meaning of 'partnership property' see para 1179 note 4 ante.
- 8 For these purposes, 'officer', in relation to a partnership, means: (1) a member of a partnership and any person who is liable as a partner within the meaning of the Partnership Act 1890 s 14 (see PARTNERSHIP vol 79 (2008) PARAS 24-26); and (2) a person who has management or control of the partnership business: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1).
- 9 Insolvency Act 1986 s 10; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 4 (amended by SI 2002/2708). The amendment made to these provisions does not apply in relation to a petition for an administration order presented before 1 January 2003: see the Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, art 11(2), (3); and para 1192 note 3 ante.
- 10 For these purposes, 'security' means any mortgage, charge, lien or other security: Insolvency Act 1986 s 248(b); Insolvent Partnerships Order 1994, SI 1994/2421, art 6(2), (3).
- 11 For these purposes, 'hire purchase agreement' and 'conditional sale agreement' have the same meanings as in the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) paras 93, 95): Insolvency Act 1986 s 436; Insolvent Partnerships Order 1994, SI 1994/2421, art 6(2), (3).
- 12 For these purposes, 'chattel leasing agreement' means an agreement for the bailment (or, in Scotland, the hiring) of goods which is capable of subsisting for more than three months: Insolvency Act 1986 s 251; Insolvent Partnerships Order 1994, SI 1994/2421, art 6(2), (3).
- 13 For these purposes, 'retention of title agreement' means an agreement for the sale of goods to a partnership, being an agreement: (1) which does not constitute a charge on the goods; but (2) under which, if the seller is not paid and the partnership is wound up, the seller will have priority over all other creditors of the partnership as respects the goods or any property representing the goods: Insolvent Partnerships Order 1994, SI 1994/2421, art 6(2), (3).
- 14 Insolvency Act 1986 s 10; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 4.
- 15 Insolvency Act 1986 s 10; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 4.
- 16 As to petitions to wind up a partnership see para 1204 et seq post.
- 17 See note 4 supra.
- 18 For the meaning of 'agricultural receiver' see para 1196 note 1 ante.
- 19 Insolvency Act 1986 s 10; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 4.
- 20 Insolvency Act 1986 s 10; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 4. As to the powers of the court to make an administration order where an agricultural receiver has been appointed see para 1198 post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

1197 Effect of presentation of petition

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1198. Hearing of petition; court's powers on hearing petition.

1198. Hearing of petition; court's powers on hearing petition.

Where the court is satisfied that there is an agricultural receiver¹ of the partnership, the court must dismiss the petition unless it is also satisfied either:

- 1527 (1) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order; or
- 1528 (2) that, if an administration order were made, any security by virtue of which the receiver was appointed would be liable to be released or discharged as a transaction at an undervalue or a preference², or would be avoided under the provisions relating to the avoidance of floating charges³, or would be challengeable⁴ under any rule of law in Scotland⁵.

Subject to the above, on hearing the petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit⁶.

Without prejudice to the generality of the provisions described above, an interim order may restrict the exercise of any powers of the officers⁷ of the partnership, whether by reference to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the partnership⁸ or otherwise⁹.

1 For the meaning of 'agricultural receiver' see para 1196 note 1 ante.

2 Ie under the Insolvency Act 1986 ss 238-240 (as amended): see para 843 et seq ante.

3 Ie under ibid s 245 (as amended): see para 861 et seq ante.

4 Ie under ibid s 242 or s 243 (as amended) or any rule of law in Scotland.

5 Ibid s 9; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 3. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

6 Insolvency Act 1986 s 9; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 3.

7 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

8 As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post.

9 Insolvency Act 1986 s 9; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 3.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1199. Effect of administration order.

1199. Effect of administration order.

On the making of an administration order, any petition for the winding up of the insolvent partnership must be dismissed, as must any petition for an order to be made by virtue of the provisions¹ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition²; and, where an administration order has been made, any agricultural receiver³ of the partnership and any receiver of the partnership property⁴ must vacate office on being required to do so by the administrator⁵.

During the period for which an administration order is in force:

- 1529 (1) no order may be made for the winding up of the partnership⁶;
- 1530 (2) no order may be made in respect of the partnership by virtue of the provisions⁷ relating to insolvency proceedings not involving the winding up of an insolvent partnership as an unregistered company where individual members present a joint bankruptcy petition⁸;
- 1531 (3) no order may be made in respect of the partnership under the provisions⁹ relating to dissolution of a partnership by the court¹⁰;
- 1532 (4) no agricultural receiver of the partnership may be appointed except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as the court may impose¹¹;
- 1533 (5) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership¹² in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as the court may impose¹³;
- 1534 (6) no other steps may be taken to enforce any security¹⁴ over the partnership property, or to repossess goods in the partnership's possession under any hire-purchase agreement, conditional sale agreement¹⁴, chattel leasing agreement¹⁶ or retention of title agreement¹⁷, except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as the court may impose¹⁸; and
- 1535 (7) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the partnership or the partnership property except with the consent of the administrator or the leave of the court and subject, where the court gives leave, to such terms as the court may impose¹⁹.

¹ ie the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 post.

² Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 5. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002

(Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

3 For the meaning of 'agricultural receiver' see para 1196 note 1 ante.

4 For the meaning of 'partnership property' see para 1179 note 4 ante.

5 Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 5. Where at any time an agricultural receiver or a receiver of part of the partnership property has vacated office under these provisions: (1) his remuneration and any expenses properly incurred by him; and (2) any indemnity to which he is entitled out of the partnership property, must be charged on and, subject to heads (1)-(7) in the text, paid out of any partnership property which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed: Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 5.

6 Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994, Sch 2 paras 1, 5.

7 See note 1 supra.

8 Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994, Sch 2 paras 1, 5.

9 le under the Partnership Act 1890 s 35 (as amended): see PARTNERSHIP vol 79 (2008) PARAS 186-190.

10 Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994, Sch 2 paras 1, 5.

12 For the meaning of 'officer' in relation to a partnership see para 1197 note 8 ante.

13 Insolvency Act 1986 s 11; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 5 (amended by SI 2002/2708). The amendment made to these provisions does not apply in relation to a petition for an administration order presented before 1 January 2003: see the Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, art 11(2), (3); and para 1192 note 3 ante.

14 For the meaning of 'security' see para 1197 note 10 ante.

15 For the meanings of 'hire-purchase agreement' and 'conditional sale agreement' see para 1197 note 11 ante.

16 For the meaning of 'chattel leasing agreement' see para 1197 note 12 ante.

17 For the meaning of 'retention of title agreement' see para 1197 note 13 ante.

18 Insolvency Act 1986 ss 10, 11; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 5.

19 Insolvency Act 1986 s11; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 5.

UPDATE

1166-1301 Insolvent Partnerships

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1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1200. Notification of administration order.

1200. Notification of administration order.

Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to an insolvent partnership, is issued by or on behalf of the partnership or the administrator, being a document on or in which the name under which the partnership carries on business appears, must also contain the administrator's name and a statement that the affairs and business of the partnership and the partnership property¹ are being managed by the administrator². If default is made in complying with this provision, the administrator, and any officer³ of the partnership who without reasonable excuse authorises or permits the default, is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum⁴.

1 For the meaning of 'partnership property' see para 1179 note 4 ante.

2 Insolvency Act 1986 s 12; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 6. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

3 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

4 Insolvency Act 1986 s 12, s 430, Sch 10; Insolvent Partnerships Order 1994, SI 1994/2421, art 6(2), (3), Sch 2 paras 1, 6. As to the statutory maximum see para 10 note 1 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1201. Appointment of administrators; vacancy.

1201. Appointment of administrators; vacancy.

The administrator of a partnership must be appointed by the administration order¹. If a vacancy occurs by death, resignation or otherwise in the office of administrator, the court may by order fill the vacancy².

An application for such an order may be made:

- 1536 (1) by any continuing administrator of the partnership; or
- 1537 (2) where there is no administrator, by a creditors' committee³; or
- 1538 (3) where there is no such administrator and no such committee, by the members of the partnership or by any creditor or creditors of the partnership⁴.

1 Insolvency Act 1986 s 13; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 7. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

The administrator must be a person who is qualified to act as an insolvency practitioner in relation to the partnership: see the Insolvent Partnerships Order 1994, SI 1994/2421, art 15 (as amended); and para 1295 post.

2 Insolvency Act 1986 s 13; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 7.

3 Ie a creditors' committee established under the Insolvency Act 1986 s 26: see para 197 ante.

4 Ibid s 13; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 7.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

1201 Appointment of administrators; vacancy

NOTES--SI 1994/2421 Sch 2 para 7 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1202. General powers of administrator.

1202. General powers of administrator.

The administrator of an insolvent partnership may do all such things as may be necessary for the management of the affairs and business of the partnership and of the partnership property¹ and, without prejudice to the generality of the above provisions, he has the following specified powers²:

- 1539 (1) power to take possession of, collect and get in the partnership property and, for that purpose, to take such proceedings as may seem to him expedient;
- 1540 (2) power to sell or otherwise dispose of the partnership property by public auction or private contract or, in Scotland, to sell, feu, hire out or otherwise dispose of the partnership property by public roup or private bargain;
- 1541 (3) power to raise or borrow money and grant security therefor over the partnership property;
- 1542 (4) power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;
- 1543 (5) power to bring and defend any claim or other legal proceedings in the name and on behalf of any member of the partnership in his capacity as such, or of the partnership;
- 1544 (6) power to refer to arbitration any question affecting the partnership;
- 1545 (7) power to effect and maintain insurances in respect of the partnership business and property;
- 1546 (8) power to do all acts and to execute, in the name and on behalf of the partnership or of any member of the partnership in his capacity as such, any deed, receipt or other document;
- 1547 (9) power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of any member of the partnership in his capacity as such, or of the partnership;
- 1548 (10) power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent, and power to employ and dismiss employees;
- 1549 (11) power to do all such things, including the carrying out of works, as may be necessary for the realisation of the partnership property;
- 1550 (12) power to make any payment which is necessary or incidental to the performance of his functions;
- 1551 (13) power to carry on the business of the partnership;
- 1552 (14) power to establish subsidiary undertakings of the partnership;
- 1553 (15) power to transfer to subsidiary undertakings of the partnership the whole or any part of the business of the partnership or of the partnership property;
- 1554 (16) power to grant or accept a surrender of a lease or tenancy of any of the partnership property, and to take a lease or tenancy of any property required or convenient for the business of the partnership;
- 1555 (17) power to make any arrangement or compromise on behalf of the partnership or of its members in their capacity as such;
- 1556 (18) power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the partnership and to receive dividends, and to accede to trust deeds for the creditors of any such person;

- 1557 (19) power to present or defend a petition for the winding up of the partnership³;
 1558 (20) power to do all things incidental to the exercise of the above powers⁴.

The administrator also has power to prevent any person from taking part in the management of the partnership business and to appoint any person to be a manager of that business, and to call any meeting of the members or creditors of the partnership⁵; and he may apply to the court⁶ for directions in relation to any particular matter arising in connection with the carrying out of his functions⁷.

Any power exercisable by the officers⁸ of the partnership, whether under the Partnership Act 1890, the partnership agreement or otherwise, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases⁹.

In exercising his powers, the administrator is deemed to act as the agent of the members of the partnership in their capacity as such¹⁰; but an officer of the partnership is not, unless he otherwise consents, personally liable for the debts and obligations of the partnership incurred during the period when the administration order is in force¹¹. A person dealing with the administrator in good faith and for value need not be concerned to inquire whether the administrator is acting within his powers¹².

1 For the meaning of 'partnership property' see para 1179 note 4 ante.

2 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 8. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante.

3 Ie under the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended).

4 Insolvency Act 1986 s 14(1), Sch 1; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 10. In the application of the Insolvency Act 1986 Sch 1 and the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 para 10 to the administrator of an insolvent partnership, the words 'he' and 'him' refer to the administrator: Insolvency Act 1986 s 14(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

5 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

6 For the meaning of 'the court' see para 1191 note 2 ante.

7 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

8 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

9 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

10 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

11 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

12 Insolvency Act 1986 s 14; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 2 paras 1, 8.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

1202 General powers of administrator

NOTES--SI 1994/2421 Sch 2 para 8 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1203. Administrator's power to deal with charged property etc.

1203. Administrator's power to deal with charged property etc.

The administrator of a partnership may dispose of, or otherwise exercise his powers in relation to, any partnership property¹ which is subject to a floating charge² as if the property were not subject to the security³; and, where property is so disposed of, the holder of the security has the same priority in respect of any partnership property directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security⁴.

Where, on an application by the administrator, the court⁵ is satisfied that the disposal, with or without other assets, of any partnership property subject to any other security or any goods in the possession of one or more officers⁶ of the partnership in their capacity as such under a hire-purchase agreement⁷, conditional sale agreement⁷, chattel leasing agreement⁸, or retention of title agreement⁹ would be likely to promote the purpose or one or more of the purposes specified in the administration order¹⁰, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under any such agreement were vested in the members of the partnership¹¹.

It must be a condition of any such order that the net proceeds of the disposal, and, where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency, are to be applied towards discharging the sums secured by the security or payable under the agreement¹². Where a condition so imposed relates to two or more securities, the condition requires that the net proceeds of the disposal and, if applicable, the other sums referred to above, be applied towards discharging the sums secured by those securities in the order of their priorities¹³.

1 For the meaning of 'partnership property' see para 1179 note 4 ante.

2 The Insolvency Act 1986 s 15(1) applies to any security which, as created, was a floating charge unless an agricultural receiver has been appointed under that security: Insolvency Act 1986 s 15; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 9. For the meaning of 'agricultural receiver' see para 1196 note 1 ante.

3 Insolvency Act 1986 s 15; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 9. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to insolvent partnerships, and the law as it was in force before such amendments and repeals continues to apply in so far as it is necessary to give effect to the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See para 1192 ante. For the meaning of 'security' see para 1197 note 10 ante.

4 Insolvency Act 1986 s 15; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 9.

5 For the meaning of 'the court' see para 1191 note 2 ante.

6 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

7 For the meanings of 'hire-purchase agreement' and 'conditional sale agreement' see para 1197 note 11 ante.

8 For the meaning of 'chattel leasing agreement' see para 1197 note 12 ante.

- 9 For the meaning of 'retention of title agreement' see para 1197 note 13 ante.
- 10 See para 1194 ante.
- 11 Insolvency Act 1986 s 15; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 9.
- 12 Insolvency Act 1986 s 15; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 9.
- 13 Insolvency Act 1986 s 15; Insolvent Partnerships Order 1994, SI 1994/2421, art 6, Sch 2 paras 1, 9.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1192-1203 Administration Orders

SI 1994/2421 art 6, Sch 2 substituted: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1204. Application of statutory provisions.

(4) CREDITORS' ETC WINDING-UP PETITIONS

(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member

1204. Application of statutory provisions.

The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies¹ apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a creditor, of a liquidator², of a temporary administrator³, of a responsible insolvency practitioner⁴, of the Secretary of State⁵ or of any other person other than a member, where no insolvency petition⁶ is presented by the petitioner against a member or former member of that partnership in his capacity as such⁷.

Certain of those provisions of the Insolvency Act 1986 are modified⁸ in their application in relation to insolvent partnerships⁹.

1 Ie the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

2 Ie a liquidator within the meaning of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 2(b), appointed in proceedings by virtue of art 3(1): see para 48 ante.

3 Ie a temporary administrator within the meaning of *ibid* art 38: see para 48 ante.

4 For these purposes, 'responsible insolvency practitioner' means:

103 (1) in a winding up, the liquidator of an insolvent partnership or corporate member; and

104 (2) in bankruptcy, the trustee of the estate of an individual member,

and in either case includes the official receiver when so acting: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1). For the meanings of 'corporate member' and individual member see para 1191 note 1 ante.

5 As to the Secretary of State see para 11 note 10 ante.

6 For the meaning of 'insolvency petition' see para 1191 note 2 ante.

7 Insolvent Partnerships Order 1994, SI 1994/2421, art 7(1) (amended by SI 1996/1308; SI 2002/1308).

8 The provisions which are modified are the Insolvency Act 1986 s 117 (as amended) (see para 439 ante), s 131 (see para 521 ante), s 133 (see para 538 ante), ss 220-223 (as amended) (see para 1147 et seq ante), s 234 (as amended) (see para 675 ante), Sch 4 (as amended) (see para 578 ante): Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 para 1.

9 *Ibid* art 7(2). The provisions of the Insolvency Act 1986 ss 220-223 (as amended) apply, after modification, as set out in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I (paras 2-5) (as amended) (see paras 1205, 1207-1212 post): art 7(2). The other provisions of the Insolvency Act 1986 described in note 8 *supra* apply as set out in Sch 3 Pt II (paras 6-10) (as amended) (see paras 1206, 1213-1217 post) for the purposes of the Insolvency Act 1986 s 221(5) as modified by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I (paras 2-5) (as amended): art 7(3).

As to the application to insolvent partnerships of subordinate legislation relating to winding up see art 18; and para 1168 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1205. Meaning of 'unregistered company'.

1205. Meaning of 'unregistered company'.

For the purposes of the provisions of the Insolvency Act 1986¹ relating to the winding up of unregistered companies², 'unregistered company' includes any insolvent partnership³.

1 Ie the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

2 For the meaning of 'unregistered company' under ibid s 220 (as amended) generally see para 1147 ante.

3 Ibid s 220; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 2. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1206. High Court and county court jurisdiction.

1206. High Court and county court jurisdiction.

The High Court has jurisdiction to wind up any insolvent partnership as an unregistered company¹ if the partnership has, or at any time had, in England and Wales either a principal place of business or a place of business at which business is or has been carried on in the course of which the debt, or part of the debt, arose which forms the basis of the petition for winding up the partnership².

A petition for the winding up of an insolvent partnership³ may be presented to a county court in England and Wales if the partnership has, or at any time had, within the insolvency district⁴ of that court either a principal place of business or a place of business at which business is or has been carried on in the course of which the debt, or part of the debt, arose which forms the basis of the winding-up petition⁵.

The court only has jurisdiction to wind up an insolvent partnership if the business of the partnership has been carried on in England and Wales at any time in the period of three years ending with the day on which the petition for winding it up is presented⁶; but, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales: (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the petition for winding it up is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the petition for winding it up is presented⁷.

Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed⁸ officer of the court must perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up⁹.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings¹⁰ concerning jurisdiction in cross-border insolvency proceedings in the European Union¹¹.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

2 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 6. This is subject to the provisions set out in the text to notes 6-7 infra: Insolvency Act 1986 s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

3 See note 1 supra.

4 As to insolvency districts see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 7.

5 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6. This is subject to the provisions set out in the text to notes 6-7 infra: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6.

The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and, for the purposes of that jurisdiction, may attach its district, or any part of it, to any other county court; and he may by statutory instrument revoke or vary any such order: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6. In exercising such powers, the Lord Chancellor must provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of the Insolvency Act 1986 Pts VIII-XI (ss 252-385) (as amended) (individual insolvency: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

6 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6. This is subject to the provisions set out in the text to note 7 infra: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6.

7 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6.

8 For the meaning of 'prescribed' see para 438 note 6 ante.

9 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6.

10 le EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante.

11 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 6 (amended by SI 2002/1308).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1206 High Court and county court jurisdiction

TEXT AND NOTES--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also s 19, Sch 7 para 4.

SI 1994/2421 Sch 3 para 6 further amended: SI 2006/680.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1207. Winding up of insolvent partnerships as unregistered companies.

1207. Winding up of insolvent partnerships as unregistered companies.

Any insolvent partnership may be wound up¹ under the Insolvency Act 1986 if it has, or at any time had, in England and Wales either a principal place of business or a place of business at which business is or has been carried on in the course of which the debt, or part of the debt, arose which forms the basis of the petition for winding up the partnership².

An insolvent partnership may not be wound up under the Insolvency Act 1986 if the business of the partnership has not been carried on in England and Wales at any time in the period of three years ending with the day on which the winding-up petition is presented³; but, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales: (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the winding-up petition is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the winding-up petition is presented⁴.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings⁵ concerning jurisdiction in cross-border insolvency proceedings in the European Union⁶.

No insolvent partnership may be wound up under the Insolvency Act 1986 voluntarily⁷.

1 Ie subject to the Insolvency Act 1986 s 221 (as modified) (see the text to notes 3-4 infra) and the provisions of Pt V (ss 220-229) (as modified and amended): see paras 1205 ante, 1208 et seq post.

2 Ibid s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 3. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

3 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3. This provision is subject to the provisions set out in the text to note 4 infra: Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3.

4 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3.

5 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante.

6 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I para 3 (amended by SI 2002/1308).

7 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1207 Winding up of insolvent partnerships as unregistered companies

NOTES--SI 1994/2421 Sch 3 para 3 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1208. Grounds for winding up insolvent partnerships as unregistered companies.

1208. Grounds for winding up insolvent partnerships as unregistered companies.

The circumstances in which an insolvent partnership may be wound up as an unregistered company are:

- 1559 (1) if the partnership is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs¹;
- 1560 (2) if the partnership is unable to pay its debts²;
- 1561 (3) if the court is of the opinion that it is just and equitable that the partnership should be wound up³;
- 1562 (4) at the time at which a moratorium for the insolvent partnership⁴ comes to an end, no approved⁵ voluntary arrangement has effect in relation to the insolvent partnership⁶.

However, a winding-up petition on the ground set out in head (4) above may only be presented by one or more creditors⁷.

1 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 3. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

2 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3. For the meaning of 'unable to pay its debts' see paras 1211-1212 post.

3 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3. For the meaning of 'just and equitable' see paras 448-449 ante. Every petition for the winding up of an insolvent partnership under the Insolvency Act 1986 Pt V (ss 220-229) (as modified and amended) must be verified by affidavit in the prescribed form: s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3. For the prescribed form of affidavit see art 17, Sch 9 Form 2. As to the use of forms see para 1296 post.

The court has jurisdiction, which will only be exercised in exceptional cases, to make a winding up order of its own motion in relation to a partnership or an unregistered company despite the absence of a petitioning creditor where one or more of the grounds set out in heads (1)-(3) in the text are satisfied: *Lancefield v Lancefield* [2002] BPIR 1108.

4 Ie under the Insolvency Act 1986 s 1A (as added and modified): see para 1172 ante.

5 Ie under *ibid* Pt I (ss 1-7B) (as amended and modified): see para 1171 et seq ante.

6 *Ibid* s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3 (amended by SI 2002/2708).

7 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3 (as amended: see note 6 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1208 Grounds for winding up insolvent partnerships as unregistered companies

NOTES--SI 1994/2421 Sch 3 para 3 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1209. Application of winding-up provisions.

1209. Application of winding-up provisions.

To the extent that they are applicable to the winding up of a company by the court in England and Wales on the petition of a creditor or of the Secretary of State, the provisions of the Insolvency Act 1986 and the Companies Act 1985 relating to winding up apply to the winding up of an insolvent partnership as an unregistered company, with certain exceptions, additions and modifications¹.

¹ Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 3. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante. As to the Secretary of State see para 11 note 10 ante.

The exceptions and additions are those mentioned in the Insolvency Act 1986 s 221 (as modified) (see infra; and para 1208 ante) and s 221A (as added) (see para 1210 post); and the modifications are those specified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II (paras 6-10) (as amended) (see paras 1206 ante, 1213 et seq post): Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 3. The following provisions of the Insolvency Act 1986 do not apply: s 73(1) (see para 433 ante); s 74(2)(a)-(d), (3) (see paras 704-705, 715 ante); ss 75-78 (see paras 706, 713, 717 ante); s 83 (see para 714 ante); s 122 (as amended) (see para 444 ante); s 123 (see para 446 ante); s 202 (see para 929 ante); s 203 (see para 930 ante); s 205 (see para 931 ante); and s 250 (see para 72 ante): s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 3.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1209 Application of winding-up provisions

NOTES--SI 1994/2421 Sch 3 para 3 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1210. Petition by liquidator, administrator, trustee or supervisor to wind up insolvent partnership as unregistered company.

1210. Petition by liquidator, administrator, trustee or supervisor to wind up insolvent partnership as unregistered company.

A petition¹ for winding up an insolvent partnership may be presented by:

- 1563 (1) the liquidator or administrator of a corporate member² or of a former corporate member; or
- 1564 (2) the administrator of the partnership; or
- 1565 (3) the trustee of an individual member's³, or of a former individual member's, estate; or
- 1566 (4) the supervisor of a voluntary arrangement approved under Part I of the Insolvency Act 1986⁴ in relation to a corporate member or the partnership, or under Part VIII of the Insolvency Act 1986⁵ in relation to an individual member,

if the ground of the petition is one of the circumstances⁶ in which an insolvent partnership may be wound up as an unregistered company⁷.

If the ground of the petition presented under these provisions is that the partnership is unable to pay its debts⁸ and the petitioning insolvency practitioner⁹ is able to satisfy the court that an insolvency order¹⁰ has been made against the member whose liquidator or trustee he is because of that member's inability to pay a joint debt¹¹, that order is, unless it is proved otherwise to the satisfaction of the court, proof¹² that the partnership is unable to pay its debts¹³.

Where a winding-up petition is presented under these provisions, the court may appoint the petitioning insolvency practitioner as provisional liquidator¹⁴ of the partnership¹⁵.

Where a winding-up order is made against an insolvent partnership after the presentation of a petition under these provisions, the court may appoint the petitioning insolvency practitioner as liquidator of the partnership¹⁶.

Where a winding-up petition is presented under these provisions, in the event of the partnership property¹⁷ being insufficient to satisfy the costs of the petitioning insolvency practitioner, the costs may be paid out of the assets of the corporate or individual member, as the case may be, as part of the expenses of the liquidation, administration, bankruptcy or voluntary arrangement of that member, in the same order of priority as expenses properly chargeable or incurred by the practitioner in getting in any of the assets of the member¹⁸.

1 For the prescribed form of petition see the Insolvent Partnerships Order 1994, SI 1994/2421, art 17, Sch 9 Form 3 (as substituted). As to the use of forms see para 1296 post.

2 For the meaning of 'corporate member' see para 1191 note 1 ante.

3 For the meaning of 'individual member' see para 1191 note 1 ante.

4 Ie the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

5 Ie ibid Pt VIII (ss 252-263): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 81 et seq.

6 le the circumstances set out in *ibid* s 221 (as modified): see para 1208 ante.

7 *Ibid* s 221A(1) (s 221A added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 7, Sch 3 Pt I paras 1, 3). As to the court's jurisdiction to make a winding-up order in relation to a partnership of its own motion in the absence of a petitioning creditor see *Lancefield v Lancefield* [2002] BPIR 1108; and para 1208 note 3 ante.

8 For the meaning of 'unable to pay its debts' see paras 1211-1212 post.

9 For these purposes, 'petitioning insolvency practitioner' means a person who has presented a petition under the Insolvency Act 1986 s 221A (as added): s 221A(2) (as added: see note 7 supra).

10 For the meaning of 'insolvency order' see para 1191 note 1 ante.

11 For these purposes, 'joint debt' means a debt of an insolvent partnership in respect of which an order is made by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, Pt IV (arts 7, 8) (as amended) (creditors' etc winding-up petitions: see paras 1204 et seq ante, 1212 et seq post) or Pt V (arts 9-11) (members' petitions: see para 1254 et seq post): art 2(1).

12 le for the purposes of the Insolvency Act 1986 s 221 (as modified).

13 *Ibid* s 221A(3) (as added: see note 7 supra).

14 le under *ibid* s 135 (appointment and powers of provisional liquidator): see para 491 ante.

15 *Ibid* s 221A(4) (as added: see note 7 supra).

16 *Ibid* s 221A(5) (as added: see note 7 supra). Where the court makes such an appointment, s 140(3) (official receiver not to become liquidator) applies as if an appointment had been made under s 140 (as amended) (see para 558 ante): s 221A(5) (as so added).

17 For the meaning of 'partnership property' see para 1179 note 4 ante.

18 Insolvency Act 1986 s 221A(6) (as added: see note 7 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1211. Inability to pay debts; unpaid creditor for £750 or more.

1211. Inability to pay debts; unpaid creditor for £750 or more.

An insolvent partnership is deemed¹ unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750² then due and:

- 1567 (1) the creditor has served on the partnership, in the manner specified below, a written demand in the prescribed form³ requiring the partnership to pay the sum so due; and
- 1568 (2) the partnership has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction⁴.

Service of the demand must be effected:

- 1569 (a) by leaving it at a principal place of business of the partnership in England and Wales; or
- 1570 (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt, or part of the debt, the subject of the demand arose; or
- 1571 (c) by delivering it to an officer⁵ of the partnership; or
- 1572 (d) by otherwise serving it in such manner as the court may approve or direct⁶.

1 le for the purposes of the Insolvency Act 1986 s 221 (as modified): see paras 1207-1209 ante.

2 The money sum so specified is subject to increase or reduction by regulations under *ibid* s 417 (see para 1152 ante); but no increase in the sum specified affects any case in which the winding-up petition was presented before the coming into force of the increase: s 222(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 4. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

3 For the prescribed form of written demand see the Insolvency Rules 1986, SI 1986/1925, rr 4.5, 12.7, Sch 4 Form 4.1 (substituted by SI 1987/1919). As to the application to insolvent partnerships of subordinate legislation relating to winding up see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

4 Insolvency Act 1986 s 222(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 4.

5 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

6 Insolvency Act 1986 s 222; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 4.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1212. Inability to pay debts; debt remaining unsatisfied after action brought.

1212. Inability to pay debts; debt remaining unsatisfied after action brought.

An insolvent partnership is deemed¹ unable to pay its debts if a claim or other proceeding has been instituted against any member² for any debt or demand due, or claimed to be due, from the partnership, or from him in his character of member, and:

- 1573 (1) notice in writing of the institution of the claim or proceeding has been served on the partnership in the manner specified below; and
- 1574 (2) the partnership has not within three weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the claim or proceeding to be stayed or sisted, or indemnified the defendant or defender to his reasonable satisfaction against the claim or proceeding, and against all costs, damages and expenses to be incurred by him because of it³.

Service of the notice must be effected:

- 1575 (a) by leaving it at a principal place of business of the partnership in England and Wales; or
- 1576 (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt or demand, or part of the debt or demand, the subject of the notice arose; or
- 1577 (c) by delivering it to an officer⁴ of the partnership; or
- 1578 (d) by otherwise serving it in such manner as the court may approve or direct⁵.

1 le for the purposes of the Insolvency Act 1986 s 221 (as modified): see paras 1207-1209 ante.

2 For the meaning of 'member' see para 1171 note 2 ante.

3 Insolvency Act 1986 s 223(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt I paras 1, 5. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

4 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

5 Insolvency Act 1986 s 223; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt I paras 1, 5.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1213. Statement of affairs of insolvent partnership.

1213. Statement of affairs of insolvent partnership.

Where the court has made a winding-up order or appointed a provisional liquidator in respect of an insolvent partnership¹, the official receiver may require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form² as to the affairs of the partnership³.

The statement must be verified by affidavit by the persons required to submit it and must show:

- 1579 (1) particulars of the debts and liabilities of the partnership and of the partnership property⁴;
- 1580 (2) the names and addresses of the partnership's creditors;
- 1581 (3) the securities held by them respectively;
- 1582 (4) the dates when the securities were respectively given; and
- 1583 (5) such further or other information as may be prescribed or as the official receiver may require⁵.

The persons who may be required to make out and submit a statement of affairs are:

- 1584 (a) those who are or have been officers⁶ of the partnership;
- 1585 (b) those who have taken part in the formation of the partnership at any time within one year before the relevant date⁷;
- 1586 (c) those who are in the employment⁸ of the partnership, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
- 1587 (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the partnership⁹.

Where any persons are required under these provisions to submit a statement of affairs to the official receiver, they must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice¹⁰ of the requirement is given to them by the official receiver¹¹; but the official receiver, if he thinks fit, may at any time release a person from an obligation imposed on him to make out and submit a statement of affairs¹² or, either when giving the notice or subsequently, extend the period of 21 days; and, where the official receiver has refused to exercise such a power, the court, if it thinks fit, may exercise it¹³.

If a person without reasonable excuse fails to comply with any obligation imposed under the provisions described above, he is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum¹⁴.

¹ ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

2 For the prescribed form of statement of affairs in the case of the winding up of a company see the Insolvency Act 1986 s 131 (as originally enacted); and para 520 ante. As to the application to insolvent partnerships of subordinate legislation relating to winding up see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

3 Insolvency Act 1986 s 131(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(2), Sch 3 Pt II para 7. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

4 For the meaning of 'partnership property' see para 1179 note 4 ante.

5 Insolvency Act 1986 s 131(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7.

6 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

7 For these purposes, 'relevant date' means: (1) in a case where a provisional liquidator is appointed, the date of his appointment; and (2) in a case where no such appointment is made, the date of the winding-up order: Insolvency Act 1986 s 131(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7.

8 For these purposes, 'employment' includes employment under a contract for services: Insolvency Act 1986 s 131(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7.

9 Insolvency Act 1986 s 131(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7.

10 As to the prescribed notice see note 2 supra.

11 Insolvency Act 1986 s 131(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7.

12 Ie under the Insolvency Act 1986 s 131(1), (2) (as modified): see the text and notes 1-5 supra.

13 Ibid s 131(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7.

14 Insolvency Act 1986 ss 131(7), 430, Sch 10; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 7. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1214. Public examination of officers of insolvent partnerships.

1214. Public examination of officers of insolvent partnerships.

Where an insolvent partnership is being wound up¹, the official receiver may at any time before the winding up is complete apply to the court for the public examination of any person who:

- 1588 (1) is or has been an officer² of the partnership; or
- 1589 (2) has acted as liquidator or administrator of the partnership or as receiver or manager or, in Scotland, receiver of its property; or
- 1590 (3) not being a person falling within heads (1) or (2) above, is or has been concerned, or has taken part, in the formation of the partnership³.

Unless the court otherwise orders, the official receiver must make such an application if he is requested⁴ to do so by one-half, in value, of the creditors of the partnership⁵.

On an application to the court for a public examination, the court must direct that a public examination of the person to whom the application relates is to be held on a day appointed by the court; and that person must attend on that day and be publicly examined as to the formation or management of the partnership or as to the conduct of its business and affairs, or his conduct or dealings in relation to the partnership⁶.

The official receiver, the liquidator of the partnership, any person who has been appointed as special manager of the partnership's property or business, and any creditor of the partnership who has tendered a proof in the winding up may take part in the public examination of a person under these provisions and may question that person concerning the above matters⁷.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

2 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

3 Insolvency Act 1986 s 133(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 8. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

4 le in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended). See, in particular, r 4.213; and para 539 ante. As to the application to insolvent partnerships of subordinate legislation relating to winding up see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

5 Insolvency Act 1986 s 133(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II para 8.

6 Insolvency Act 1986 s 133(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 8.

7 Insolvency Act 1986 s 133(4); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 8. The matters referred to are those mentioned in the Insolvency Act 1986 s 133(3) (as modified) (see the text and note 6 supra): s 133(4); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 8.

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1215. Getting in the partnership property.

1215. Getting in the partnership property.

Where an insolvent partnership is being wound up or a provisional liquidator of an insolvent partnership is appointed¹, the following provisions apply².

Any person who is or has been an officer³ of the partnership, or who is an executor or administrator of the estate of a deceased officer of the partnership, must deliver up to the office-holder⁴, for the purposes of the exercise of the office-holder's functions under the Insolvency Act 1986 and, where applicable, the Company Directors Disqualification Act 1986, possession of any partnership property⁵ which he holds for the purposes of the partnership⁶.

Where any person has in his possession or control any property, books, papers or records to which the partnership appears to be entitled, the court may require that person forthwith, or within such period as the court may direct, to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder or as the court may direct⁷.

Where the office-holder seizes or disposes of any property which is not partnership property and at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled, whether in pursuance of an order of the court or otherwise, to seize or dispose of that property, the office-holder: (1) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence; and (2) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal⁸.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

2 Insolvency Act 1986 s 234(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 9. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

3 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

4 For these purposes, 'office-holder' means the liquidator or the provisional liquidator, as the case may be: Insolvency Act 1986 s 234(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 9.

5 For the meaning of 'partnership property' see para 1179 note 4 ante. As to the application of the Company Directors Disqualification Act 1986 to insolvent partnerships see para 1297 et seq post.

6 Insolvency Act 1986 s 234; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 9.

7 Insolvency Act 1986 s 234(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 9.

8 Insolvency Act 1986 s 234(3), (4); Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 9.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1216. Liquidator's powers exercisable with sanction.

1216. Liquidator's powers exercisable with sanction.

Where an insolvent partnership is being wound up¹, the liquidator with the sanction of either the court or of the liquidation committee has the following powers:

- 1591 (1) power to pay any class of creditors in full;
- 1592 (2) power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the partnership, or whereby the partnership may be rendered liable;
- 1593 (3) power to compromise, on such terms as may be agreed, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the partnership and a contributory or alleged contributory or other debtor or person apprehending liability to the partnership, and all questions in any way relating to or affecting the partnership property² or the winding up of the partnership, and to take any security for the discharge of any such debt, liability or claim and to give a complete discharge in respect of it;
- 1594 (4) power to bring or defend any claim or other legal proceeding in the name and on behalf of any member of the partnership in his capacity as such, or of the partnership;
- 1595 (5) power to carry on the business of the partnership so far as may be necessary for its beneficial winding up³.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

2 For the meaning of 'partnership property' see para 1179 note 4 ante. For the meaning of 'contributory' see para 703 ante.

3 Insolvency Act 1986 s 167, Sch 4 Pts I, II paras 1-5; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 10. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

As to the application to insolvent partnerships of the provisions of the Insolvency Act 1986 relating to the power of a liquidator and to the liquidation committee see para 1204 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1216 Liquidator's powers exercisable with sanction

NOTE 3--SI 1994/2421 Sch 3 Pt II para 10 amended: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where No Concurrent Petition Presented Against Member/1217. Liquidator's powers exercisable without sanction.

1217. Liquidator's powers exercisable without sanction.

Where an insolvent partnership is being wound up¹, the liquidator has, without the sanction of the court or the liquidation committee, the following powers:

- 1596 (1) power to sell any of the partnership property² by public auction or private contract, with power to transfer the whole of it to any person or to sell the same in parcels;
- 1597 (2) power to do all acts and execute, in the name and on behalf of the partnership or of any member³ of the partnership in his capacity as such, all deeds, receipts and other documents;
- 1598 (3) power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt⁴ due from the bankrupt or insolvent, and rateably with the other separate creditors;
- 1599 (4) power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of any member of the partnership in his capacity as such, or of the partnership, with the same effect with respect to the liability of the partnership or of any member of the partnership in his capacity as such as if the bill or note had been drawn, accepted, made or indorsed in the course of the partnership's business;
- 1600 (5) power to raise on the security of the partnership property any money requisite;
- 1601 (6) power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the partnership; and, in all such cases, the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself;
- 1602 (7) power to appoint an agent to do any business which the liquidator is unable to do himself;
- 1603 (8) power to do all such other things as may be necessary for winding up the partnership's affairs and distributing its property⁵.

¹ le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

² For the meaning of 'partnership property' see para 1179 note 4 ante.

³ For the meaning of 'member' see para 1171 note 2 ante.

⁴ For these purposes, 'separate debt' means a debt for which a member of a partnership is liable, other than a joint debt: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1). For the meaning of 'joint debt' see para 1210 note 11 ante. For the meaning of 'contributory' see para 703 ante.

⁵ Insolvency Act 1986 s 167, Sch 4 Pt III; Insolvent Partnerships Order 1994, SI 1994/2421, art 7(3), Sch 3 Pt II para 10. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply

to the winding up of an insolvent partnership on the petition of any person other than a member, where no petition is presented against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 (as amended): see para 1204 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1217 Liquidator's powers exercisable without sanction

NOTE 5--SI 1994/2421 Sch 3 Pt II para 10 amended: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1218. Application of statutory provisions.

(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members

1218. Application of statutory provisions.

Certain provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies¹ apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a creditor, of a liquidator² or of a temporary administrator³ where insolvency petitions⁴ are presented by the petitioner against the partnership and against one or more members⁵ or former members of the partnership in their capacity as such⁶.

Certain of the provisions of the Insolvency Act 1986 are modified⁷ in their application in relation to insolvent partnerships⁸.

The provisions of the Insolvency Act 1986 relating to the winding up of companies registered under the Companies Act 1985⁹, in so far as they relate to winding up of companies by the court in England and Wales on a creditor's petition, apply in relation to the winding up of a corporate member or former corporate member (in its capacity as such) of an insolvent partnership which is being wound up by virtue of the above provisions¹⁰.

Certain provisions of the Insolvency Act 1986 relating to bankruptcy¹¹, in so far as they relate to the bankruptcy of individuals in England and Wales on a petition presented by a creditor, apply in relation to the bankruptcy of an individual member or former individual member, in his capacity as such, of an insolvent partnership which is being wound up by virtue of the above provisions¹².

The provisions of the Insolvency Act 1986 applied by the above provisions are further modified so that references to a corporate or individual member include any former such member against whom an insolvency petition is being or has been presented by virtue of the above provisions¹³.

1 I.e. the Insolvency Act 1986 ss 220-222, 225-229 (as amended): see para 1147 et seq ante.

2 I.e. a liquidator within the meaning of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 2(b), appointed in proceedings by virtue of art 3(1): see para 47 note 5 ante.

3 I.e. a temporary administrator within the meaning of *ibid* art 38: see para 53 ante.

4 For the meaning of 'insolvency petition' see para 1191 note 2 ante.

5 For the meaning of 'member' see para 1171 note 2 ante.

6 Insolvent Partnerships Order 1994, SI 1994/2421, art 8(1) (amended by SI 2002/1308).

7 The provisions which are modified are the Insolvency Act 1986 s 117 (as amended), ss 122-125 (as amended), s 131, s 133, s 136, s 137, s 139, s 140 (as amended), s 141, s 143, s 146, s 147, s 168 (as amended), s 172, s 174, s 175, s 189, s 211, s 220 (as amended), s 221 (as amended), s 222, s 230 (as amended), s 231 (as amended), s 234 (as amended), s 264 (as amended), s 265 (as amended), s 267 (as amended), s 268, s 271, s 283 (as amended), s 284, s 288, ss 292-296 (as amended), ss 298-303 (as amended),

s 305, s 314, s 328, s 331, s 356, Sch 4 (as amended): Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), (3), Sch 4 para 1(1), (2). As to the modified provisions see para 1219 et seq post.

8 Ibid art 8(2). The provisions of the Insolvency Act 1986 ss 220-222 (as amended) apply, after modification, as set out in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I (paras 1-4): art 8(2). The other provisions of the Insolvency Act 1986 described in note 7 supra apply as set out in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II (paras 5-30) (as amended) for the purposes of the Insolvency Act 1986 s 221 (as modified) (see para 1220 post): Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3). As to the application to insolvent partnerships of subordinate legislation relating to winding up see art 18; and para 1168 ante.

9 Ie the Insolvency Act 1986 Pt IV (ss 73-219) (as amended), Pt VI (ss 230-246) (as amended), Pt VII (ss 247-251) (as amended) and Pts XII-XIX (ss 386-444) (as amended). Certain of those provisions are modified in their application in relation to the corporate or former corporate members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II (paras 5-30) (as amended): art 8(8). See also notes 7, 8 supra. For the meaning of 'corporate member' see para 1191 note 1 ante.

10 Ibid art 8(4), (5).

11 Ie the Insolvency Act 1986 Pt IX (ss 264-371) (as amended) (other than ss 269, 270, 287, 297 (as amended)) and Pts X-XIX (ss 372-444) (as amended). Certain of those provisions are modified in their application in relation to the individual members or former individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II (paras 5-30) (as amended): art 8(8). See also notes 7, 8 supra. For the meaning of 'individual member' see para 1191 note 1 ante.

12 Ibid art 8(6), (7).

13 Ibid art 8(9).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1218 Application of statutory provisions

NOTE 10--SI 1994/2421 art 8(5) amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1219. Meaning of 'unregistered company'.

1219. Meaning of 'unregistered company'.

For the purposes of the provisions of the Insolvency Act 1986¹ relating to the winding up of unregistered companies², 'unregistered company' includes any insolvent partnership³.

1 Ie the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified): see para 1147 et seq ante.

2 For the meaning of 'unregistered company' under ibid s 220 (as amended) see para 1147 ante.

3 Ibid s 220; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt I paras 1(1), 2. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1220. Application of winding-up provisions.

1220. Application of winding-up provisions.

To the extent that they are applicable to the winding up of a company by the court in England and Wales on a creditor's petition, the provisions of the Insolvency Act 1986 and the Companies Act 1985 relating to winding up apply to the winding up of an insolvent partnership as an unregistered company, with certain exceptions, additions and modifications¹.

¹ Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I para 3. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

The exceptions and additions are those mentioned in the Insolvency Act 1986 s 221 (as modified) (see paras 1222-1223 post); and the modifications are those specified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II (paras 5-30) (as amended) (see paras 1221, 1225 et seq post): Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I para 3. The following provisions of the Insolvency Act 1986 do not apply: s 73(1) (see para 433 ante); s 74(2)(a)-(d), (3) (see paras 704-705, 715 ante); ss 75-78 (see paras 706, 713, 717 ante); s 83 (see para 714 ante); s 154 (see para 831 ante); s 202 (see para 929 ante); s 203 (see para 930 ante); s 205 (see para 931 ante); and s 250 (see para 72 ante): s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I para 3.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1220 Application of winding-up provisions

NOTE 1--SI 1994/2421 Sch 4 para 3 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1221. High Court and county court jurisdiction.

1221. High Court and county court jurisdiction.

The High Court has jurisdiction to wind up any insolvent partnership as an unregistered company¹ if the partnership has, or at any time had, in England and Wales either a principal place of business or a place of business at which business is or has been carried on in the course of which the debt, or part of the debt, arose which forms the basis of the petition for winding up the partnership².

A petition for the winding up of an insolvent partnership³ may be presented to a county court in England and Wales if the partnership has, or at any time had, within the insolvency district⁴ of that court either a principal place of business or a place of business at which business is or has been carried on in the course of which the debt, or part of the debt, arose which forms the basis of the winding-up petition⁵.

The court only has jurisdiction to wind up an insolvent partnership if the business of the partnership has been carried on in England and Wales at any time in the period of three years ending with the day on which the petition for winding it up is presented⁶; but, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales: (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the petition for winding it up is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the petition for winding it up is presented⁷.

The court has jurisdiction to wind up a corporate member⁸ or former corporate member, or make a bankruptcy order against an individual member⁹ or former individual member, of a partnership against which a petition has been presented¹⁰ if it has jurisdiction in respect of the partnership¹¹; but petitions for the winding up of an insolvent partnership and the bankruptcy of one or more members or former members of that partnership may not be so presented to a district registry of the High Court¹².

Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed¹³ officer of the court must perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up¹⁴.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings¹⁵ concerning jurisdiction in cross-border insolvency proceedings in the European Union¹⁶.

¹ le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

² Insolvency Act 1986 s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 5. This provision is subject the provisions set out in the text to notes 3-14 infra: Insolvency Act 1986 s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 5.

The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where

insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

The modifications to the Insolvency Act s 117 (as amended) also apply so as to modify s 265 (see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) para 125): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5.

3 See note 1 supra.

4 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. See also note 2 supra. This is subject to the provisions set out in the text to notes 6-7 infra: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and, for the purposes of that jurisdiction, may attach its district, or any part of it, to any other county court; and he may by statutory instrument revoke or vary any such order: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. In exercising such powers, the Lord Chancellor must provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of the Insolvency Act 1986 Pts VIII-XI (ss 252-385) (as amended) (individual insolvency: see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY*): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. As to the Lord Chancellor see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

5 As to insolvency districts see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) para 7.

6 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. See also note 2 supra. This is subject to the provisions set out in the text to note 7 infra: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5.

7 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. See also note 2 supra.

8 For the meaning of 'corporate member' see para 1191 note 1 ante.

9 For the meaning of 'individual member' see para 1191 note 1 ante.

10 See note 1 supra.

11 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. See also note 2 supra. This is subject to the provisions set out in the text to note 12 infra: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5.

12 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. See also note 2 supra.

13 For the meaning of 'prescribed' see para 438 note 6 ante.

14 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5. See also note 2 supra.

15 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante

16 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 5 (amended by SI 2002/1308).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in *PARA 2 NOTE 5*.

1221 High Court and county court jurisdiction

TEXT AND NOTES--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also s 19, Sch 7 para 4.

SI 1994/2421 Sch 5 para 5 further amended: SI 2006/680.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1222. Winding up of insolvent partnerships as unregistered companies.

1222. Winding up of insolvent partnerships as unregistered companies.

Any insolvent partnership may be wound up under the Insolvency Act 1986¹ if it has, or at any time had, in England and Wales either a principal place of business, or a place of business at which business is or has been carried on in the course of which the debt, or part of the debt, arose which forms the basis of the petition for winding up the partnership².

An insolvent partnership may not be wound up under the Insolvency Act 1986 if the business of the partnership has not been carried on in England and Wales at any time in the period of three years ending with the day on which the winding-up petition is presented³; but, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales: (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the winding-up petition is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the winding-up petition is presented⁴.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings⁵ concerning jurisdiction in cross-border insolvency proceedings in the European Union⁶.

No insolvent partnership may be wound up under the Insolvency Act 1986 voluntarily⁷.

Unless the contrary intention appears, a member of a partnership against whom an insolvency order⁸ has been made⁹ is not to be treated as a contributory for the purposes of the Insolvency Act 1986¹⁰.

1 Ie subject to the provisions set out in the text to notes 3-4 infra, and the provisions of the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified) (see para 1223 et seq post).

2 Ibid s 221(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt I paras 1(1), 3. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

3 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 3.

4 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 3.

5 Ie EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante.

6 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 3 (amended by SI 2002/1308).

7 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 3.

8 For the meaning of 'insolvency order' see para 1191 note 1 ante.

9 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

10 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 3. For the meaning of 'contributory' for the purposes of the Insolvency Act 1986 see para 703 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1222 Winding up of insolvent partnerships as unregistered companies

NOTES--SI 1994/2421 Sch 4 para 3 amended: SI 2006/622.

NOTE 2--Insolvency Act 1986 s 221(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1223. Ground for winding up insolvent partnerships as unregistered companies.

1223. Ground for winding up insolvent partnerships as unregistered companies.

The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows:

- 1604 (1) the partnership is unable to pay its debts¹;
- 1605 (2) at the time at which a moratorium for the insolvent partnership² comes to an end, no approved³ voluntary arrangement has effect in relation to the insolvent partnership⁴.

1 Insolvent Partnership Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt I paras 1(1), 3 (amended by SI 2002/2708). The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. For the meaning of 'unable to pay its debts' see para 1224 post.

2 Ie under the Insolvency Act 1986 s 1A (as added and modified): see para 1172 ante.

3 Ie under ibid Pt I (ss 1-7B) (as amended and modified): see para 1171 et seq ante.

4 Ibid s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt I paras 1(1), 3 (amended by SI 2002/2708).

Every petition for the winding up of an insolvent partnership under the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified) must be verified by affidavit in the prescribed form: Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt I paras 1(1), 3. For the prescribed form of affidavit see the Insolvent Partnerships Order 1994, SI 1994/2421, art 17, Sch 9 Form 2. As to the use of forms see para 1296 post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1223 Ground for winding up insolvent partnerships as unregistered companies

NOTES--SI 1994/2421 Sch 4 para 3 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1224. Inability to pay debts; unpaid creditor for £750 or more.

1224. Inability to pay debts; unpaid creditor for £750 or more.

An insolvent partnership is deemed¹ unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750² then due and:

1606 (1) the creditor has served on the partnership, in the manner specified below, a written demand in the prescribed form³ requiring the partnership to pay the sum so due;

1607 (2) the creditor has also served on any one or more members or former members of the partnership liable to pay the sum due, in the case of a corporate member⁴ by leaving it at its registered office and in the case of an individual member⁵ by serving it in accordance with the rules, a demand in the prescribed form⁶ requiring that member or those members to pay the sum so due; and

1608 (3) the partnership and its members have for three weeks after the service of the demands, or the service of the last of them if served at different times, neglected to pay the sum or to secure or compound for it to the creditor's satisfaction⁷.

Service of the demand on the partnership must be effected:

1609 (a) by leaving it at a principal place of business of the partnership in England and Wales; or

1610 (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt, or part of the debt, the subject of the demand arose; or

1611 (c) by delivering it to an officer⁸ of the partnership; or

1612 (d) by otherwise serving it in such manner as the court may approve or direct⁹.

¹ le for the purposes of the Insolvency Act 1986 s 221 (as amended and modified): see paras 1222-1223 ante.

² The money sum specified is subject to increase or reduction by regulations under *ibid* s 417 (see para 1152 ante); but no increase in the sum specified affects any case in which the winding-up petition was presented before the coming into force of the increase: s 222(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt I paras 1(1), 4. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

³ For the prescribed form of written demand see *ibid* art 17, Sch 9 Form 4. As to the use of forms see para 1296 post.

⁴ For the meaning of 'corporate member' see para 1191 note 1 ante.

⁵ For the meaning of 'individual member' see para 1191 note 1 ante.

⁶ See note 3 *supra*.

7 Insolvency Act 1986 s 222(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 4.

8 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

9 Insolvency Act 1986 s 222; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt I paras 1(1), 4.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1225. Circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court.

1225. Circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court.

A corporate member¹ or former corporate member may be wound up by the court if:

- 1613 (1) it is unable to pay its debts²;
- 1614 (2) there is a creditor, by assignment or otherwise, to whom the insolvent partnership is indebted and the corporate member or former corporate member is liable in relation to that debt and at the time at which a moratorium for the insolvent partnership³ comes to an end, no approved⁴ voluntary arrangement has effect in relation to the insolvent partnership⁵.

Where a petition for the winding up of an insolvent partnership has been presented to the court⁶, a creditor's petition against any individual member⁷ or former individual member of that partnership must be in respect of one or more joint debts⁸ owed by the insolvent partnership, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or, as the case may be, at least one of the debts is owed⁹.

Subject to the provisions relating to the position where a moratorium comes to an end¹⁰ and to the provisions relating to a statutory demand¹¹, a creditor's petition may be presented to the court in respect of a joint debt or debts only if, at the time the petition is presented:

- 1615 (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level¹²;
- 1616 (b) the debt, or each of the debts, is for a liquidated sum payable immediately to the petitioning creditor, or one or more of the petitioning creditors, and is unsecured;
- 1617 (c) the debt, or each of the debts, is a debt for which the individual member or former member is liable and which he appears to be unable to pay; and
- 1618 (d) there is no outstanding application to set aside a statutory demand served in respect of the debt or any of the debts¹³.

A creditor's petition may be presented to the court in respect of a joint debt or debts if, at the time at which a moratorium for the insolvent partnership comes to an end, no approved voluntary arrangement has effect in relation to the insolvent partnership¹⁴.

¹ For the meaning of 'corporate member' see para 1191 note 1 ante.

² Insolvency Act 1986 s 122; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 6(a) (substituted by SI 2002/2708). The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. For the meaning of 'unable to pay its debts' see para 1226 post.

- 3 le under the Insolvency Act 1986 s 1A (as added and modified): see para 1172 ante.
- 4 le under ibid Pt I (ss 1-7B) (as amended and modified): see para 1169 et seq ante.
- 5 Insolvency Act 1986 s 122; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 6(a) (as substituted: see note 2 supra).
- 6 le by virtue of ibid art 8 (as amended): see para 1218 ante.
- 7 For the meaning of 'individual member' see para 1191 note 1 ante.
- 8 For the meaning of 'joint debt' see para 1210 note 11 ante.
- 9 Insolvency Act 1986 s 267(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 6(b).
- 10 le the Insolvency Act s 267(2A) (as added and modified): see the text and note 14 infra.
- 11 le ibid s 268 (as modified): see para 1226 post.
- 12 The 'bankruptcy level' is £750; but the Secretary of State may by order in a statutory instrument substitute any amount specified in the order for that amount or, as the case may be, for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level: ibid s 267(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 6(b). An order may not be so made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament: Insolvency Act 1986 s 267(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 6(b).
- 13 Insolvency Act 1986 s 267(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 6(b) (amended by SI 2002/2708). As to service of a statutory demand see para 1226 post.
- 14 Insolvency Act 1986 s 267; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 6(b) (amended by SI 2002/2708).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in **PARA 2 NOTE 5**.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1226. Meaning of 'inability to pay debts'.

1226. Meaning of 'inability to pay debts'.

A corporate member¹ or former member is deemed unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750² then due for which the member or former member is liable and:

- 1619 (1) the creditor has served on that member or former member and the partnership, in the manner specified below, a written demand in the prescribed form³ requiring that member or former member and the partnership to pay the sum so due; and
- 1620 (2) the corporate member or former member and the partnership have for three weeks after the service of the demands, or the service of the last of them if served at different times, neglected to pay the sum or to secure or compound for it to the creditor's satisfaction⁴.

Service of the demand must be effected, in the case of the corporate member or former corporate member, by leaving it at its registered office, and, in the case of the partnership:

- 1621 (a) by leaving it at a principal place of business of the partnership in England and Wales; or
- 1622 (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt, or part of the debt, the subject of the demand arose; or
- 1623 (c) by delivering it to an officer⁵ of the partnership; or
- 1624 (d) by otherwise serving it in such manner as the court may approve or direct⁶.

An individual member⁷ or former individual member appears to be unable to pay a joint debt⁸ for which he is liable⁹ if the debt is payable immediately and the petitioning creditor to whom the insolvent partnership owes the joint debt has served on the individual member or former individual member in accordance with the Insolvency Rules 1986¹⁰ a demand ('the statutory demand') in the prescribed form¹¹, and has served on the partnership in the manner specified below a demand ('the written demand') in the same form¹¹, requiring the member or former member and the partnership to pay the debt or to secure or compound for it to the creditor's satisfaction, and at least three weeks have elapsed since the service of the demands, or the service of the last of them if served at different times, and neither demand has been complied with nor the demand against the member set aside in accordance with the rules¹².

Service of the written demand on the partnership must be effected:

- 1625 (i) by leaving it at a principal place of business of the partnership in England and Wales; or
- 1626 (ii) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt, or part of the debt, the subject of the demand arose; or
- 1627 (iii) by delivering it to an officer of the partnership; or

1628 (iv) by otherwise serving it in such manner as the court may approve or direct¹³.

- 1 For the meaning of 'corporate member' see para 1191 note 1 ante.
- 2 The money sum so specified is subject to increase or reduction by order under the Insolvency Act 1986 s 416 (see para 440 ante): s 123(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 7(a). The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.
- 3 For the prescribed form of written demand see *ibid* art 17, Sch 9 Form 4. As to the use of forms see para 1296 post.
- 4 Insolvency Act 1986 s 123(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 7(a).
- 5 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.
- 6 Insolvency Act 1986 s 123; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 7(a).
- 7 For the meaning of 'individual member' see para 1191 note 1 ante.
- 8 For the meaning of 'joint debt' see para 1210 note 11 ante.
- 9 *le* for the purposes of the Insolvency Act 1986 s 267 (as modified): see para 1225 head (3) ante.
- 10 *le* the Insolvency Rules 1986, SI 1986/1925 (as amended). For the rules relating to service of a statutory demand on an individual see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 156, 166 et seq.
- 11 See note 3 *supra*.
- 12 Insolvency Act 1986 s 268(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 7(b). For the rules relating to the setting aside of a statutory demand see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 13 Insolvency Act 1986 s 268; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 7(b).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1227. Applications to wind up insolvent partnership and to wind up or bankrupt insolvent member.

1227. Applications to wind up insolvent partnership and to wind up or bankrupt insolvent member.

An application to the court¹ for the winding up of an insolvent partnership as an unregistered company and the winding up or bankruptcy, as the case may be, of at least one of its members or former members must be by petition in the prescribed form, different forms being prescribed in the case of the partnership², in the case of a corporate member³ or former corporate member⁴, and in the case of an individual member⁵ or former individual member⁶.

Each of the petitions mentioned above may be presented by a liquidator⁷, a temporary administrator⁸ or any creditor or creditors to whom the partnership and the member or former member in question is indebted in respect of a liquidated sum payable immediately⁹.

The petitions mentioned above must all be presented to the same court and, except as the court otherwise permits or directs, on the same day, and, except in the case of the petition against an individual member or former individual member, must be advertised in the prescribed form¹⁰.

At any time after presentation of a petition under these provisions the petitioner may, with the leave of the court obtained on application and on such terms as it thinks just, add other members or former members of the partnership as parties to the proceedings in relation to the insolvent partnership¹¹.

Each petition presented under these provisions must contain particulars of other petitions being presented in relation to the partnership, identifying the partnership and members concerned¹².

The hearing of the petition against the partnership fixed by the court must be in advance of the hearing of any petition against an insolvent member¹³.

On the day appointed for the hearing of the petition against the partnership, the petitioner must, before the commencement of the hearing, hand to the court a notice in the prescribed form¹⁴, duly completed, of progress on the petitions presented¹⁵.

Any member of the partnership or any person against whom a winding-up or bankruptcy petition has been presented in relation to the insolvent partnership is entitled to appear and to be heard on any petition for the winding up of the partnership¹⁶.

A petitioner under these provisions may at the hearing withdraw a petition if he withdraws at the same time every other petition which he has presented under these provisions¹⁷ and he gives notice to the court at least three days before the date appointed for the hearing of the relevant petition of his intention to withdraw the petition¹⁸.

Where such a notice is given, the court may, on such terms as it thinks just, substitute as petitioner¹⁹, both in respect of the partnership and in respect of each insolvent member against whom a petition has been presented, any creditor of the partnership who in its opinion would have a right to present the petitions; and, if the court makes such a substitution, the petitions in question will not be withdrawn²⁰.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

2 For the prescribed form of petition see *ibid* art 17, Sch 9 Form 5 (substituted by SI 2002/2708). As to the use of forms see para 1296 post.

3 For the meaning of 'corporate member' see para 1191 note 1 ante.

4 For the prescribed form of petition see the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 9 Form 6 (substituted by SI 2002/2708).

5 For the meaning of 'individual member' see para 1191 note 1 ante.

6 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 8. For the prescribed form of petition see Sch 9 Form 7 (substituted by SI 2002/2708).

The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

The modifications to the Insolvency Act 1986 s 124 also apply so as to modify s 264 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 195): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8.

7 le a liquidator within the meaning of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 2(b), appointed in proceedings by virtue of art 3(1): see para 48 ante.

8 le a temporary administrator within the meaning of *ibid* art 38: see para 53 ante.

9 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8 (amended by SI 2002/1308). See also note 6 *supra*.

10 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*. For the prescribed form of advertisement see Sch 9 Form 8.

11 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

12 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

13 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*. For the meaning of 'insolvent member' see para 1191 note 2 ante.

14 For the prescribed form of notice see *ibid* Sch 9 Form 9.

15 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

16 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

17 A petitioner need not comply with this provision in the case of a petition against an insolvent member if the court is satisfied on application made to it by the petitioner that, because of difficulties in serving the petition or for any other reason, the continuance of that petition would be likely to prejudice or delay the proceedings on the petition which he has presented against the partnership or on any petition which he has presented against any other insolvent member: Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

18 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

19 For these purposes, the reference to substitution of a petitioner includes reference to change of carriage of the petition in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*. As to the rules relating to change of carriage of the petition see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 183.

20 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 8. See also note 6 *supra*.

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1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1228. Powers of court on hearing of petitions against insolvent partnership and members.

1228. Powers of court on hearing of petitions against insolvent partnership and members.

On hearing a petition¹ against an insolvent partnership or any of its insolvent members², the court may³ dismiss it, or adjourn the hearing conditionally or unconditionally or make any other order that it thinks fit; but the court may not refuse to make a winding-up order against the partnership or a corporate member⁴ on the ground only that the partnership property⁵ or, as the case may be, the member's assets have been mortgaged to an amount equal to or in excess of that property or those assets, or that the partnership has no property or the member no assets⁶.

An order so made in respect of an insolvent partnership may contain directions as to the future conduct of any insolvency proceedings in existence against any insolvent member in respect of whom an insolvency order⁷ has been made⁸.

On the hearing of a petition against an insolvent member, the petitioner must draw the court's attention to the result of the hearing of the winding-up petition against the partnership; and the following provisions apply⁹.

If the court has neither made a winding-up order, nor dismissed the winding-up petition, against the partnership, the court may adjourn the hearing of the petition against the member until either event has occurred¹⁰.

If a winding-up order has been made against the partnership, the court may make a winding-up order against the corporate member in respect of which, or, as the case may be, a bankruptcy order against the individual member¹¹ in respect of whom, the insolvency petition¹² was presented¹³; but, if no insolvency order is made against any member within 28 days of the making of the winding-up order against the partnership, the proceedings against the partnership must be conducted as if the winding-up petition against the partnership had been presented under the provisions¹⁴ relating to the winding up of an insolvent partnership as an unregistered company where no concurrent petition is presented against a member and the proceedings against any member must be conducted under the Insolvency Act 1986 without the modifications¹⁵ made by the Insolvent Partnerships Order 1994¹⁶.

If the court has dismissed the winding-up petition against the partnership, the court may dismiss the winding-up petition against the corporate member or, as the case may be, the bankruptcy petition against the individual member; but, if an insolvency order is made against a member, the proceedings against that member must be conducted under the Insolvency Act 1986 without the modifications¹⁷ made by the Insolvent Partnerships Order 1994¹⁸.

The court may dismiss a petition against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the winding-up order against the partnership¹⁹.

The court may dismiss a petition against an insolvent member who is a limited partner²⁰, if the member lodges in court for the benefit of the creditors of the partnership sufficient money or security to the court's satisfaction to meet his liability for the debts and obligations of the

partnership, or the member satisfies the court that he is no longer under any liability in respect of the debts and obligations of the partnership²¹.

Nothing in the provisions described above²² prejudices the power of the court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those provisions had been done only by or in relation to the remaining creditors or debts²³.

1 le under the Insolvency Act 1986 s 124 (as modified): see para 1227 ante.

2 For the meaning of 'insolvent member' see para 1191 note 2 ante.

3 le subject to the provisions of the Insolvency Act 1986 s 125A (as added): see the text and notes 9-23 infra.

4 For the meaning of 'corporate member' see para 1191 note 1 ante.

5 For the meaning of 'partnership property' see para 1179 note 4 ante.

6 Insolvency Act 1986 s 125(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 9. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 125 and the addition of s 125A also apply so as to modify s 271 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 195, 829): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 9.

7 For the meaning of 'insolvency order' see para 1191 note 1 ante.

8 Insolvency Act 1986 s 125; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 9. See also note 6 supra.

9 Insolvency Act 1986 s 125A(1) (s 125A added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 9).

10 Insolvency Act 1986 s 125A(2) (as added: see note 9 supra).

11 For the meaning of 'individual member' see para 1191 note 1 ante.

12 For the meaning of 'insolvency petition' see para 1191 note 2 ante.

13 Insolvency Act 1986 s 125A(3) (as added: see note 9 supra).

14 le the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 ante.

15 le other than the modifications made to the Insolvency Act 1986 ss 168, 303 by the Insolvent Partnerships Order 1994, SI 1994/2421, art 14: see para 1294 post.

16 Insolvency Act 1986 s 125A(4) (as added: see note 9 supra).

17 See note 15 supra.

18 Insolvency Act 1986 s 125A(5) (as added: see note 9 supra).

19 Ibid s 125A(6) (as added: see note 9 supra).

20 For these purposes, 'limited partner' has the same meaning as in the Limited Partnerships Act 1907 (see PARTNERSHIP vol 79 (2008) PARA 219): Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1).

21 Insolvency Act 1986 s 125A(7) (as added: see note 9 supra).

22 Or in ibid s 267 (as modified and amended), s 268 (as modified): see paras 1225, 1226 ante.

23 Ibid s 125A(8) (as added: see note 9 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1229. Statements of affairs; insolvent partnerships; corporate members; individual members.

1229. Statements of affairs; insolvent partnerships; corporate members; individual members.

The provisions described below apply where the court has¹ made a winding-up order or appointed a provisional liquidator in respect of an insolvent partnership, or made a winding-up order or appointed a provisional liquidator in respect of any corporate member² of that partnership, or made a bankruptcy order in respect of any individual member³ of that partnership⁴.

The official receiver may require some or all of the persons mentioned below to make out and submit to him a statement as to the affairs of the partnership or member in the prescribed form⁵. The statement must be verified by affidavit by the persons required to submit it and must show:

- 1629 (1) particulars of the debts and liabilities of the partnership or of the member, as the case may be, and of the partnership property⁶ and member's assets;
- 1630 (2) the names and addresses of the creditors of the partnership or of the member, as the case may be;
- 1631 (3) the securities held by them respectively;
- 1632 (4) the dates when the securities were respectively given; and
- 1633 (5) such further or other information as may be prescribed or as the official receiver may require⁷.

The persons who may be required to make out and submit a statement of affairs are those who are or have been officers⁸ of the partnership, those who are or have been officers of the corporate member, those who have taken part in the formation of the partnership or of the corporate member at any time within one year before the relevant date⁹, those who are in the employment¹⁰ of the partnership or of the corporate member, or have been in such employment within that year, and are in the official receiver's opinion capable of giving the information required, and those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the partnership or an officer of the corporate member¹¹.

Where any persons are required under these provisions to submit a statement of affairs to the official receiver, they must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice¹² of the requirement is given to them by the official receiver¹³; but the official receiver, if he thinks fit, may at any time release a person from an obligation imposed on him to make out and submit a statement of affairs¹⁴ or, either when giving the notice or subsequently, extend the period of 21 days; and, where the official receiver has refused to exercise such a power, the court, if it thinks fit, may exercise it¹⁵.

Any person who without reasonable excuse fails to comply with any obligation imposed under the above provisions, other than, in the case of an individual member, an obligation in respect of his own statement of affairs, is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum, and, on conviction after continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum¹⁶.

An individual member who without reasonable excuse fails to comply with any obligation imposed under the above provisions in respect of his own statement of affairs is guilty of a contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject¹⁷.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

2 For the meaning of 'corporate member' see para 1191 note 1 ante.

3 For the meaning of 'individual member' see para 1191 note 1 ante.

4 Insolvency Act 1986 s 131; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), Sch 4 Pt II para 10. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 131 also apply so as to modify s 288 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 244 et seq): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10.

5 Insolvency Act 1986 s 131(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra. As to the prescribed form of statement of affairs for a partnership and corporate member see para 1213 ante; and as to the prescribed form of statement of affairs for an individual member see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 245. As to the official receiver see para 503 et seq ante.

6 For the meaning of 'partnership property' see para 1179 note 4 ante.

7 Insolvency Act 1986 s 131(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra.

8 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

9 For these purposes, 'relevant date' means: (1) in a case where a provisional liquidator is appointed, the date of his appointment; and (2) in a case where no such appointment has been made, the date of the winding-up order: Insolvency Act 1986 s 131(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra.

10 For these purposes, 'employment' includes employment under a contract for services: Insolvency Act 1986 s 131(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10.

11 Insolvency Act 1986 s 131(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra.

12 'Prescribed' means prescribed by the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 251.

13 Ibid s 131(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra.

14 le under the Insolvency Act 1986 s 131(1), (2) (as modified): see the text and notes 5-7 supra.

15 Ibid s 131(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra.

16 Insolvency Act 1986 s 131(7), s 430, Sch 10; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(2), (5), Sch 4 Pt II para 10. See also note 4 supra. As to the statutory maximum, and as to daily default fines, see para 10 note 1 ante.

17 Insolvency Act 1986 s 131; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 10. See also note 4 supra.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1230. Public examination of officers of insolvent partnerships.

1230. Public examination of officers of insolvent partnerships.

Where an insolvent partnership is being wound up¹, the official receiver may at any time before the winding up is complete apply to the court for the public examination of any person who:

- 1634 (1) is or has been an officer² of the partnership; or
- 1635 (2) has acted as liquidator or administrator of the partnership or as receiver or manager or, in Scotland, receiver of its property;
- 1636 (3) not being a person falling within heads (1) and (2) above, is or has been concerned, or has taken part, in the formation of the partnership³.

Unless the court otherwise orders, the official receiver must make such an application if he is requested⁴ to do so by one-half, in value, of the creditors of the partnership⁵.

On an application to the court for a public examination, the court must direct that a public examination of the person to whom the application relates be held on a day appointed by the court; and that person must attend on that day and be publicly examined as to the formation or management of the partnership or as to the conduct of its business and affairs, or his conduct or dealings in relation to the partnership⁶.

The official receiver, the liquidator of the partnership, any person who has been appointed as special manager of the partnership's property or business, and any creditor of the partnership who has tendered a proof in the winding up may take part in the public examination of a person under these provisions and may question that person concerning the matters mentioned above⁷.

On an application to the court for a public examination, the court may direct that the public examination of any person in relation to the affairs of an insolvent partnership be combined with the public examination of any person under the Insolvency Act 1986 in relation to the affairs of a corporate member⁸ of that partnership against which, or of an individual member⁹ of the partnership against whom, an insolvency order¹⁰ has been made¹¹.

¹ ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

² For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

³ Insolvency Act 1986 s 133(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 11. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. As to the official receiver see para 503 et seq ante.

⁴ ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended). See, in particular, r 4.213; and para 539 ante. As to the application to insolvent partnerships of subordinate legislation relating to winding up see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

⁵ Insolvency Act 1986 s 133(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 11.

- 6 Insolvency Act 1986 s 133(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 11.
- 7 Insolvency Act 1986 s 133(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 11. The matters referred to in the text are those mentioned in the Insolvency Act 1986 s 133(3) (as modified) (see the text to note 6 supra): s 133(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 11.
- 8 For the meaning of 'corporate member' see para 1191 note 1 ante.
- 9 For the meaning of 'individual member' see para 1191 note 1 ante.
- 10 For the meaning of 'insolvency order' see para 1191 note 1 ante.
- 11 Insolvency Act 1986 s 133; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 11.

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1166-1301 Insolvent Partnerships

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1231. Functions of the official receiver in relation to the office of responsible insolvency practitioner; duty of official receiver to summon meeting.

The provisions described below have effect¹ where insolvency orders are made² in respect of an insolvent partnership and one or more of its insolvent members³.

The official receiver⁴, by virtue of his office, becomes the responsible insolvency practitioner⁵ of the partnership and of any insolvent member and continues in office until another person⁶ becomes responsible insolvency practitioner⁷. The official receiver is, by virtue of his office, the responsible insolvency practitioner of the partnership and of any insolvent member during any vacancy⁸.

At any time when he is the responsible insolvency practitioner of the insolvent partnership and of any insolvent member, the official receiver may summon a combined meeting of the creditors of the partnership and the creditors of any such member, for the purpose of choosing a person to be responsible insolvency practitioner in place of the official receiver⁹.

It is the duty of the official receiver, as soon as practicable in the period of 12 weeks beginning with the day on which the insolvency order was made against the partnership, to decide whether to exercise his power¹⁰ to summon a meeting for the purpose of choosing a person to be responsible insolvency practitioner in his place¹¹.

If the official receiver decides not to exercise that power, he must give notice of his decision, before the end of that period, to the court and to the creditors of the partnership and the creditors of any insolvent member against whom an insolvency order has been made¹².

Whether or not the official receiver has decided to exercise that power to summon a meeting, he must exercise that power if he is at any time requested to do so¹³ by one-quarter, in value, of either the partnership's creditors or the creditors of any insolvent member against whom an insolvency order has been made¹⁴. Accordingly, where the duty imposed by such a request arises before the official receiver has performed his duty to decide whether to summon a meeting¹⁵ or to give notice of his decision not to do so¹⁶, he is not required to perform the latter duty¹⁷.

Where a meeting of creditors of the partnership and of any insolvent member has been held under these provisions and an insolvency order is subsequently made against a further insolvent member¹⁸, any person chosen at that meeting to be responsible insolvency practitioner in place of the official receiver must also be the responsible insolvency practitioner of the member against whom the subsequent order is made, and the duties imposed on the official receiver under these provisions¹⁹ do not apply²⁰.

¹ le subject to the Insolvency Act 1986 s 140 (as modified): see para 1234 post.

² le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante. For the meaning of 'insolvency order' see para 1191 note 2 ante.

³ Insolvency Act 1986 s 136(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 12. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where

insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 136 and the addition of s 136A (see note 11 infra) also apply so as to modify ss 293, 294 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 265, 267): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 12. For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 As to the official receiver see para 503 et seq ante.

5 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

6 Ie under the provisions of the Insolvency Act 1986 Pt IV (ss 73-219) (as amended) (see para 438 et seq ante) or Pt IX (ss 264-371) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY), as the case may be.

7 Ibid s 136(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 12. See also note 3 supra.

8 Insolvency Act 1986 s 136(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 12. See also note 3 supra.

9 Insolvency Act 1986 s 136(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 12. See also note 3 supra.

10 Ie under the Insolvency Act 1986 s 136(4) (as modified): see the text to note 9 supra.

11 Ibid s 136A(1)(a) (s 136A added by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 12). See also note 3 supra. If the official receiver has decided to exercise his power to summon a meeting, he must hold that meeting in the period of four months beginning with the day on which the insolvency order was made against the partnership: Insolvency Act 1986 s 136A(3) (as so added).

12 Ibid s 136A(1)(b) (as added: see note 11 supra). See also note 3 supra. A notice so given to the creditors must contain an explanation of the creditors' power under s 136A(1)(c) (as added) (see the text to note 14 infra) to require the official receiver to summon a combined meeting of the creditors of the partnership and of any insolvent member: s 136A(2) (as so added).

13 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 1233 post.

14 Insolvency Act 1986 s 136A(1)(c) (as added: see note 11 supra). See also note 3 supra. If, whether or not he has decided to exercise that power, the official receiver is requested, in accordance with the provisions of s 136A(1)(c) (as added), to exercise his power under s 136(4) (as modified) (see the text to note 9 supra) to summon a meeting, he must hold that meeting in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 136A(4) (as so added). As to the applicable rules see para 1233 post.

15 Ie under ibid s 136A(1)(a) (as added): see the text to note 11 supra.

16 Ie under ibid s 136A(1)(b) (as added): see the text to note 12 supra.

17 Ibid s 136A(1) (as added: see note 11 supra). See also note 3 supra.

18 See note 2 supra.

19 Ie under the Insolvency Act 1986 s 136A(1) (as added): see the text to notes 10-17 supra.

20 Ibid s 136A(5) (as added: see note 11 supra). See also note 3 supra.

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1232. Appointment of responsible insolvency practitioner by Secretary of State.

The provisions described below apply where the court has made insolvency orders¹ in respect of an insolvent partnership and one or more of its insolvent members².

The official receiver³ may, at any time when he is the responsible insolvency practitioner⁴ of the partnership and of any insolvent member, apply to the Secretary of State for the appointment of a person as responsible insolvency practitioner of both the partnership and of any such member in his place⁵.

If a meeting is held in pursuance of a decision by the official receiver to summon a meeting⁶ but no person is chosen to be responsible insolvency practitioner as a result of that meeting, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State⁷.

On any such application to the Secretary of State by the official receiver or on a reference made to the Secretary of State in pursuance of a decision by the official receiver to refer the matter to him, the Secretary of State must either make an appointment or decline to make one⁸.

If no appointment is made by the Secretary of State, the official receiver continues to be the responsible insolvency practitioner of the partnership and its insolvent member or members, but without prejudice to his power to make a further application or reference⁹.

Where a responsible insolvency practitioner has been appointed by the Secretary of State and an insolvency order is subsequently made against a further insolvent member¹⁰, then the practitioner so appointed must also be the responsible insolvency practitioner of the member against whom the subsequent order is made¹¹.

Where a responsible insolvency practitioner has been appointed by the Secretary of State or has become responsible insolvency practitioner of a further insolvent member under the provisions described above, that practitioner must give notice of his appointment or further appointment, as the case may be, to the creditors of the insolvent partnership and the creditors of the insolvent member or members against whom insolvency orders have been made or, if the court so allows, must advertise his appointment in accordance with the directions of the court¹².

In that notice or advertisement the responsible insolvency practitioner must state whether he proposes to summon¹³ a combined meeting of the creditors of the insolvent partnership and of the insolvent member or members against whom insolvency orders have been made, for the purpose of determining whether a creditors' committee should be established and, if he does not propose to summon such a meeting, set out the power of the creditors of the partnership and of the insolvent member or members to require him to summon one¹⁴.

Where, in a case where a responsible insolvency practitioner has become responsible insolvency practitioner of a further insolvent member¹⁵, a meeting has already been held¹⁶, the responsible insolvency practitioner must state in the notice or advertisement whether a creditors' committee was established at that meeting and, if such a committee was established, must state whether he proposes to appoint additional members of the committee¹⁷.

and, if such a committee was not established, must set out the power¹⁸ of the creditors of the partnership and of the insolvent member or members to require him to summon a meeting for the purpose of determining whether a creditors' committee should¹⁸ be established¹⁹.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante. For the meaning of 'insolvency order' see para 1191 note 1 ante.

2 Insolvency Act 1986 s 137; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 13. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 137 and the addition of s 137A (see note 8 infra) also apply so as to modify ss 295, 296, 300 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 269, 321, 368): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 13. For the meaning of 'insolvent member' see para 1191 note 2 ante.

3 As to the official receiver see para 503 et seq ante.

4 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

5 Insolvency Act 1986 s 137(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 13. See also note 2 supra. As to the Secretary of State see para 11 note 10 ante.

6 le under the Insolvency Act 1986 s 136A(1)(a) (as added): see para 1231 ante.

7 Ibid s 137(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 13. See also note 2 supra.

8 Insolvency Act 1986 s 137A(1) (added by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 13). See also note 2 supra.

9 Insolvency Act 1986 s 137A(2) (as added: see note 8 supra). See also note 2 supra.

10 See note 1 supra.

11 Insolvency Act 1986 s 137A(3) (as added: see note 8 supra). See also note 2 supra.

12 Insolvency Act 1986 s 137A(4) (as added: see note 8 supra). See also note 2 supra.

13 le under the Insolvency Act 1986 s 141 (as modified): see para 1235 post.

14 Ibid s 137A(5) (as added: see note 8 supra). See also note 2 supra.

15 le under ibid s 137A(3) (as added): see the text to note 11 supra.

16 See note 13 supra.

17 le under the Insolvency Act 1986 s 141A(3) (as added): see para 1235 post.

18 See note 13 supra.

19 Insolvency Act 1986 s 137A(6) (as added: see note 8 supra). See also note 2 supra.

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1233. Rules applicable to meetings of creditors.

Where the court has made insolvency orders¹ against an insolvent partnership and one or more of its insolvent members², the rules relating to the requisitioning, summoning, holding and conducting of meetings on the winding up of a company apply, with the necessary modifications, to the requisitioning, summoning, holding and conducting of separate meetings of the creditors of the partnership or of any corporate member³ against which an insolvency order has been made, and combined meetings of the creditors of the partnership and the creditors of the insolvent member or members⁴.

The rules relating to the requisitioning, summoning, holding and conducting of meetings on the bankruptcy of an individual apply, with the necessary modifications, to the requisitioning, summoning, holding and conducting of separate meetings of the creditors of any individual member⁵ against whom an insolvency order has been made⁶.

Any combined meeting of creditors must be conducted as if the creditors of the partnership and of the insolvent member or members were a single set of creditors⁷.

1 For the meaning of 'insolvency order' see para 1191 note 1 ante.

2 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante. For the meaning of 'insolvent member' see para 1191 note 2 ante.

3 For the meaning of 'corporate member' see para 1191 note 1 ante.

4 Insolvency Act 1986 s 139; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 14. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

As to meetings of creditors in the case of the winding up of a company see the Insolvency Rules 1986, SI 1986/1925, Pt 4 Ch 8 (rr 4.50-4.72) (as amended); and para 532 et seq ante. As to the application to insolvent partnerships of subordinate legislation relating to company insolvency see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

5 For the meaning of 'individual member' see para 1191 note 1 ante.

6 Insolvency Act 1986 s 139; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 14. As to meetings of creditors in the case of the insolvency of an individual see the Insolvency Rules 1986, SI 1986/1925, Pt 6 Ch 7 (rr 6.79-6.95) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 265 et seq.

7 Insolvency Act 1986 s 139; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 14.

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1234. Appointment by the court following administration or voluntary arrangement.

Where insolvency orders¹ are made in respect of an insolvent partnership and one or more of its insolvent members² immediately upon the discharge of an administration order in respect of the partnership, the court may appoint as responsible insolvency practitioner³ the person who has ceased on the discharge of the administration order to be the administrator of the partnership⁴.

Where such insolvency orders are made at a time when there is a supervisor of a voluntary arrangement approved in relation to the partnership⁵, the court may appoint as responsible insolvency practitioner the person who is the supervisor at the time when the winding-up order against the partnership is made⁶.

Where the court makes an appointment under these provisions, the official receiver does not become the responsible insolvency practitioner as otherwise provided⁷, and he has no duty⁸ in respect of the summoning of creditors' meetings⁹.

1 For the meaning of 'insolvency order' see para 1191 note 1 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

4 Insolvency Act 1986 s 140; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 15. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. As to administration orders see para 146 et seq ante.

5 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended and modified): see para 1169 et seq ante.

6 Ibid s 140(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 15.

7 Ie under the Insolvency Act 1986 s 136(2) (as modified): see para 1231 ante. As to the official receiver see para 503 et seq ante.

8 Ie under ibid s 136A(1)(a) or (b) (as added): see para 1231 ante.

9 Ibid s 140(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 15.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1234 Appointment by the court following administration or voluntary arrangement

NOTE 4--SI 1994/2421 Sch 4 Pt II para 15 amended: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1235. Creditors' committee; insolvent partnership and members.

1235. Creditors' committee; insolvent partnership and members.

Where insolvency orders¹ are made in respect of an insolvent partnership and one or more of its insolvent members² and a combined meeting of creditors has been summoned for the purpose of choosing a person to be the responsible insolvency practitioner³ of the partnership and of any such insolvent member or members, the provisions described below apply⁴.

The meeting of creditors may establish a committee ('the creditors' committee') which must consist of creditors of the partnership or creditors of any insolvent member against whom an insolvency order has been made, or both⁵.

The responsible insolvency practitioner of the partnership and of its insolvent member or members, not being the official receiver, may at any time, if he thinks fit, summon a combined general meeting of the creditors of the partnership and of such member or members for the purpose of determining whether a creditors' committee should be established and, if it is so determined, of establishing it⁶.

The responsible insolvency practitioner, not being the official receiver, must summon such a meeting if he is requested⁷ to do so by one-tenth, in value, of either the partnership's creditors or the creditors of any insolvent member against whom an insolvency order has been made⁸.

The committee established under these provisions acts as liquidation committee for the partnership and for any corporate member⁹ against which an insolvency order has been made, and as creditors' committee for any individual member¹⁰ against whom an insolvency order has been made; and, as appropriate, it exercises the functions conferred on liquidation and creditors' committees in a winding up or bankruptcy by or under the Insolvency Act 1986¹¹.

The rules relating to liquidation committees apply, with the necessary modifications and with the exclusion of all references to contributories, to a committee established under these provisions¹².

Where the appointment of the responsible insolvency practitioner also takes effect in relation to a further insolvent member¹³, the practitioner may appoint any creditor of that member, being qualified under the rules to be a member of the committee, to be an additional member of any creditors' committee already established under these provisions, provided that the creditor concerned consents to act¹⁴.

The court may at any time, on application by a creditor of the partnership or of any insolvent member against whom an insolvency order has been made, appoint additional members of the creditors' committee¹⁵. If additional members of the creditors' committee are so appointed, the limit on the maximum number of members of the committee specified in the rules is increased by the number of additional members so appointed¹⁶.

The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is responsible insolvency practitioner of the partnership and of its insolvent member or members; but at any such time its functions are vested in the Secretary of State, except to the extent that the rules otherwise provide¹⁷.

Where there is for the time being no creditors' committee, and the responsible insolvency practitioner is a person other than the official receiver, the functions of such a committee are vested in the Secretary of State, except to the extent that the rules otherwise provide¹⁸.

- 1 For the meaning of 'insolvency order' see para 1191 note 1 ante.
- 2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante. For the meaning of 'insolvent member' see para 1191 note 2 ante.
- 3 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.
- 4 Insolvency Act 1986 s 141; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 16. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 141 and the addition of s 141A also apply so as to modify ss 301, 302 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 328, 343): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 16.
- 5 Insolvency Act 1986 s 141; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 16.
- 6 Insolvency Act 1986 s 141; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 16. As to the official receiver see para 503 et seq ante.
- 7 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 1231 ante.
- 8 Insolvency Act 1986 s 141; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 16.
- 9 For the meaning of 'corporate member' see para 1191 note 1 ante.
- 10 For the meaning of 'individual member' see para 1191 note 1 ante.
- 11 Insolvency Act 1986 s 141A(1) (s 141A added by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 16). See also note 4 supra. As to the functions conferred on a liquidation committee in a winding up see para 629 et seq ante; and as to the functions conferred on a creditors' committee in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 328 et seq.
- 12 Insolvency Act 1986 s 141A(2) (as added: see note 11 supra). See also note 4 supra. As to liquidation committees see the Insolvency Rules 1986, SI 1986/1925, Pt 4 Ch 12 (rr 4.151-4.172A) (as amended); and para 629 et seq. As to the application to insolvent partnerships of subordinate legislation relating to company insolvency see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.
- 13 Ie under the Insolvency Act 1986 s 136A(5) (as added) (see para 1231 ante) or s 137A(3) (as added) (see para 1232 ante).
- 14 Ibid s 141A(3) (as added: see note 11 supra).
- 15 Ibid s 141A(4) (as added: see note 11 supra).
- 16 Ibid s 141A(5) (as added: see note 11 supra).
- 17 Ibid s 141A(6) (as added: see note 11 supra). As to the Secretary of State see para 11 note 10 ante.
- 18 Ibid s 141A(7) (as added: see note 11 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1236. General functions of responsible insolvency practitioner.

1236. General functions of responsible insolvency practitioner.

The functions of the responsible insolvency practitioner¹ of an insolvent partnership and of its insolvent member² or members against whom insolvency orders³ have been made⁴ are to secure that the partnership property⁵ and the assets of any such corporate member⁶, and the estate of any such individual member⁷, are got in, realised and distributed to their respective creditors and, if there is a surplus of such property or assets or in such estate, to the persons entitled to it⁸.

In the carrying out of those functions, and in the management of the partnership property and of the assets of any corporate member and of the estate of any individual member, the responsible insolvency practitioner is entitled, subject to the provisions of the Insolvency Act 1986, to use his own discretion⁹.

It is the duty of the responsible insolvency practitioner, if he is not the official receiver:

- 1637 (1) to furnish the official receiver with information;
- 1638 (2) to produce to the official receiver, and permit inspection by the official receiver of, books, papers and other records; and
- 1639 (3) to give the official receiver other assistance,

such as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up of the partnership and any corporate member or in relation to the bankruptcy of any individual member¹⁰.

1 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

2 For the meaning of 'insolvent member' see para 1191 note 2 ante.

3 For the meaning of 'insolvency order' see para 1191 note 1 ante.

4 I.e. under the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

5 For the meaning of 'partnership property' see para 1179 note 4 ante.

6 For the meaning of 'corporate member' see para 1191 note 1 ante.

7 For the meaning of 'individual member' see para 1191 note 1 ante. As to the official name of the responsible insolvency practitioner in his capacity as trustee of an individual member see the Insolvency Act 1986 s 143; and the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 17.

8 Insolvency Act 1986 s 143(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 17. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 143 also apply so as to modify s 168(4) (see para 572 ante) and s 305 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 456); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 17.

- 9 Insolvency Act 1986 s 143; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 17.
- 10 Insolvency Act 1986 s 143(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 17.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1237. Duty to summon final meeting of creditors.

1237. Duty to summon final meeting of creditors.

The provisions described below apply¹ if it appears to the responsible insolvency practitioner² of an insolvent partnership which is being wound up³ and of its insolvent member⁴ or members that the winding up of the partnership or of any corporate member⁵, or the administration of any individual member's⁶ estate, is for practical purposes complete and the practitioner is not the official receiver⁷.

The responsible insolvency practitioner must summon a final general meeting of the creditors of the partnership or of the insolvent member or members, as the case may be, or a combined final general meeting of the creditors of the partnership and of the insolvent member or members which must, as appropriate, receive the practitioner's report of the winding up of the insolvent partnership or of any corporate member or of the administration of the estate of any individual member, and must determine whether the practitioner should have his release⁸ in respect of the winding up of the partnership or of the corporate member, or the administration of the individual member's estate, as the case may be⁹.

The responsible insolvency practitioner may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the partnership property¹⁰ or the property of the insolvent member or members; but, if summoned for an earlier date, that meeting must be adjourned and, if necessary, further adjourned, until a date on which the practitioner is able to report to the meeting that the winding up of the partnership or of any corporate member, or the administration of any individual member's estate, is for practical purposes complete¹¹.

In the carrying out of his functions in the winding up of the partnership and of any corporate member and the administration of any individual member's estate, it is the duty of the responsible insolvency practitioner to retain sufficient sums from the partnership property and the property of any such insolvent member to cover the expenses of summoning and holding any meeting required by the provisions described above¹².

1 le subject to the Insolvency Act 1986 s 146(2) (as modified) (see the text to note 11 infra) and to s 332 (saving for bankrupt's home: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 606).

2 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

3 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

4 For the meaning of 'insolvent member' see para 1191 note 2 ante.

5 For the meaning of 'corporate member' see para 1191 note 1 ante.

6 For the meaning of 'individual member' see para 1191 note 1 ante.

7 Insolvency Act 1986 s 146(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 18. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 146 also

apply so as to modify s 331 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 606): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 18. As to the official receiver see para 503 et seq ante.

8 le under the Insolvency Act 1986 s 174 (as modified): see para 1241 post.

9 Ibid s 146; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 18.

10 For the meaning of 'partnership property' see para 1179 note 4 ante.

11 Insolvency Act 1986 s 146(2); Insolvent Partnerships Order 1994, SI 1994, SI 1994/2421, Sch 4 Pt II para 18.

12 Insolvency Act 1986 s 146(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 18.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1238. Power of court to stay proceedings.

1238. Power of court to stay proceedings.

The court may, at any time after an order has been made¹ for winding up an insolvent partnership, on the application of the responsible insolvency practitioner or the official receiver² or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up of the partnership ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit³.

If, in the course of hearing an insolvency petition⁴ presented against a member⁵ of an insolvent partnership, the court is satisfied that an application has been or will be made for such a stay of proceedings in respect of a winding-up order made against the partnership, the court may adjourn the petition against the insolvent member⁶, either conditionally or unconditionally⁷.

Where the court makes an order staying all proceedings on the order for winding up an insolvent partnership, the court may, on hearing any insolvency petition presented against an insolvent member of the partnership, dismiss that petition; and, if any insolvency order⁸ has already been made⁹ in relation to an insolvent member of the partnership, the court may make an order annulling or rescinding that insolvency order, or may make any other order that it thinks fit¹⁰.

The court may, before making any order under these provisions, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application¹¹.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante. For the meaning of 'the court' see para 1191 note 2 ante.

2 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante. As to the official receiver see para 503 et seq ante.

3 Insolvency Act 1986 s 147(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 19. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. For the meaning of 'contributory' see para 703 ante.

4 For the meaning of 'insolvency petition' see para 1191 note 2 ante.

5 For the meaning of 'member' see para 1171 note 2 ante.

6 For the meaning of 'insolvent member' see para 1191 note 2 ante.

7 Insolvency Act 1986 s 147; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 19.

8 For the meaning of 'insolvency order' see para 1191 note 1 ante.

9 See note 1 supra.

10 Insolvency Act 1986 s 147; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 19.

- 11 Insolvency Act 1986 s 147(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 19.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1239. Supplementary powers of responsible insolvency practitioner.

1239. Supplementary powers of responsible insolvency practitioner.

Where the court has made insolvency orders¹ in respect of an insolvent partnership and one or more of its insolvent members², the responsible insolvency practitioner³ of the partnership and of such member or members may at any time summon either separate or combined general meetings of the creditors or contributories of the partnership, and the creditors or contributories of the member or members, for the purpose of ascertaining their wishes⁴.

It is the duty of the responsible insolvency practitioner to summon:

- 1640 (1) separate meetings at such times as the creditors of the partnership or of the member, as the case may be, or the contributories of any corporate member⁵, by resolution, either at the meeting appointing the responsible insolvency practitioner or otherwise, may direct, or whenever requested in writing to do so by one-tenth, in value, of such creditors or contributories, as the case may be; and
- 1641 (2) combined meetings at such times as the creditors of the partnership and of the member or members by resolution, either at the meeting appointing the responsible insolvency practitioner or otherwise, may direct, or whenever requested in writing to do so by one-tenth, in value, of such creditors⁶.

The responsible insolvency practitioner may apply to the court, in the prescribed manner⁷, for directions in relation to any particular matter arising in the winding up of the insolvent partnership or in the winding up or bankruptcy of an insolvent member⁸.

If any person is aggrieved by an act or decision of the responsible insolvency practitioner, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just⁹.

1 For the meaning of 'insolvency order' see para 1191 note 1 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante. For the meaning of 'insolvent member' see para 1191 note 2 ante.

3 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

4 Insolvency Act 1986 s 168(1), (2); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 20. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 168(1)-(3), (5) also apply so as to modify s 303 (as amended), s 314(7) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 344, 463): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 20.

5 For the meaning of 'corporate member' see para 1191 note 1 ante.

6 Insolvency Act 1986 s 168; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 20.

7 As to the prescribed manner for applying to the court for directions see para 146 ante.

8 Insolvency Act 1986 s 168(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 20. As to the modification of the Insolvency Act 1986 s 168(4) by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 17 see para 1236 ante.

9 Insolvency Act 1986 s 168(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 20.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1240. Removal etc of responsible insolvency practitioner or of provisional liquidator.

1240. Removal etc of responsible insolvency practitioner or of provisional liquidator.

The provisions described below apply with respect to the removal from office and vacation of office of:

- 1642 (1) the responsible insolvency practitioner¹ of an insolvent partnership which is being wound up² and of its insolvent member³ or members against whom insolvency orders⁴ have been made; or
- 1643 (2) a provisional liquidator of an insolvent partnership, and of any corporate member⁵ of that partnership, against which a winding-up petition is presented⁶,

and any removal from or vacation of office under these provisions relates⁷ to all offices held in the proceedings relating to the partnership⁸.

Subject as follows, the responsible insolvency practitioner or provisional liquidator may be removed from office only by an order of the court⁹.

If appointed by the Secretary of State, the responsible insolvency practitioner may be removed from office by a direction of the Secretary of State¹⁰.

A responsible insolvency practitioner or provisional liquidator, not being the official receiver, must vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the insolvent partnership or any insolvent member of it against whom an insolvency order has been made¹¹.

The responsible insolvency practitioner may, with the leave of the court, or, if appointed by the Secretary of State, with the leave of the court or the Secretary of State, resign his office by giving notice of his resignation to the court¹².

Where a final meeting of creditors of an insolvent partnership or of insolvent members has been held¹³, the responsible insolvency practitioner whose report was considered at the meeting must vacate office as liquidator of the insolvent partnership or of any corporate member or as trustee of the estate of any individual member, as the case may be, as soon as he has given notice to the court and, in the case of a corporate member, to the registrar of companies, that the meeting has been held and of the decisions, if any, of the meeting¹⁴.

The responsible insolvency practitioner must vacate office as trustee of the estate of an individual member¹⁵ if the insolvency order against that member is annulled¹⁶.

1 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 For the meaning of 'insolvency order' see para 1191 note 1 ante.

5 For the meaning of 'corporate member' see para 1191 note 1 ante. As to the appointment and powers of provisional liquidators see para 491 et seq ante.

6 See note 2 supra.

7 Ie subject to the Insolvency Act 1986 s 172 (as modified): see the text and notes 9-16 infra.

8 Ibid s 172(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 21. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 172 also apply so as to modify s 298 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 361 et seq): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21.

9 Insolvency Act 1986 s 172(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21.

10 Insolvency Act 1986 s 172(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21. As to the Secretary of State see para 11 note 10 ante.

11 Insolvency Act 1986 s 172(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21. As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post. As to the official receiver see para 503 et seq ante.

12 Insolvency Act 1986 s 172(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21.

13 Ie under the Insolvency Act 1986 s 146 (as modified): see para 1237 ante.

14 Ibid s 172(8); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21.

15 For the meaning of 'individual member' see para 1191 note 1 ante.

16 Insolvency Act 1986 s 172; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 21.

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1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1241. Release of responsible insolvency practitioner or of provisional liquidator.

1241. Release of responsible insolvency practitioner or of provisional liquidator.

The provisions described below apply with respect to the release of:

- 1644 (1) the responsible insolvency practitioner¹ of an insolvent partnership which is being wound up² and of its insolvent member³ or members against whom insolvency orders⁴ have been made; or
- 1645 (2) a provisional liquidator of an insolvent partnership, and of any corporate member⁵ of that partnership, against which a winding-up petition is⁶ presented⁷.

Where the official receiver has ceased to be the responsible insolvency practitioner and a person is appointed in his stead, the official receiver has his release with effect from the following time, that is to say:

- 1646 (a) in a case where that person was nominated by a combined general meeting of creditors of the partnership and of any insolvent member or members, or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced;
- 1647 (b) in a case where that person is appointed by the court, such time as the court may determine⁸.

If the official receiver, while he is a responsible insolvency practitioner, gives notice to the Secretary of State that the winding up of the partnership or of any corporate member or the administration of the estate of any individual member is for practical purposes complete, he has his release as liquidator or trustee, as the case may be, with effect from such time as the Secretary of State may determine⁹.

A person other than the official receiver who has ceased to be a responsible insolvency practitioner has his release with effect from the following time, that is to say:

- 1648 (i) in the case of a person who has died, the time at which notice is given to the court¹⁰ that that person has ceased to hold office;
- 1649 (ii) in the case of a person who has been removed from office by the court or by the Secretary of State, or who has vacated office by reason of ceasing to be qualified to act as an insolvency practitioner¹¹, such time as the Secretary of State may, on an application by that person, determine;
- 1650 (iii) in the case of a person who has resigned, such time as may be directed by the court, or, if he was appointed by the Secretary of State, such time as may be directed by the court or as the Secretary of State may, on an application by that person, determine;
- 1651 (iv) in the case of a person who has vacated office¹² following the final meeting, if the final meeting has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine, and, if that meeting has not so resolved, the time at which that person vacated office¹³.

A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine¹⁴.

Where a bankruptcy order in respect of an individual member¹⁵ is annulled, the responsible insolvency practitioner at the time of the annulment has his release with effect from such time as the court may determine¹⁶.

Where the responsible insolvency practitioner or provisional liquidator, including in both cases the official receiver when so acting, has his release under these provisions, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the winding up of the insolvent partnership or any corporate member or in the administration of the estate of any individual member, as the case may be, and otherwise in relation to his conduct as responsible insolvency practitioner or provisional liquidator¹⁷.

Nothing in these provisions prevents the exercise, in relation to a person who has had his release, of the court's powers under the provisions¹⁸ relating to the summary remedy against delinquent directors, liquidators etc or the liability of a trustee¹⁹.

1 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 For the meaning of 'insolvency order' see para 1191 note 1 ante.

5 For the meaning of 'corporate member' see para 1191 note 1 ante.

6 See note 2 supra.

7 Insolvency Act 1986 s 174(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 22. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 174 also apply so as to modify s 299 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 375 et seq): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

8 Insolvency Act 1986 s 174(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22. As to the Secretary of State see para 11 note 10 ante. As to the official receiver see para 503 et seq ante.

9 Insolvency Act 1986 s 174(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

10 Ie in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): see para 623 ante. As to the application to insolvent partnerships of subordinate legislation relating to the winding up of companies and bankruptcy see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

11 Ie under the Insolvency Act 1986 s 172(5) (as modified): see para 1240 ante.

12 Ie under ibid s 172(8) (as modified): see para 1240 ante.

13 Ibid s 174(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

14 Insolvency Act 1986 s 174(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

15 For the meaning of 'individual member' see para 1191 note 1 ante.

16 Insolvency Act 1986 s 174; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

17 Insolvency Act 1986 s 174(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

18 le the Insolvency Act 1986 s 212 (as amended) (see para 688 et seq ante) and s 304 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 346-347).

19 Ibid s 174(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 22.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1242. Priority of expenses.

1242. Priority of expenses.

The provisions described below apply¹ as regards priority of expenses incurred by a responsible insolvency practitioner² of an insolvent partnership, and of any insolvent member³ of that partnership against whom an insolvency order⁴ has been made⁵.

The joint estate⁶ of the partnership is applicable in the first instance in payment of the joint expenses⁷ and the separate estate⁸ of each insolvent member is applicable in the first instance in payment of the separate expenses⁹ relating to that member¹⁰.

Where the joint estate is insufficient for the payment in full of the joint expenses, the unpaid balance must be apportioned equally between the separate estates of the insolvent members against whom insolvency orders have been made and form part of the expenses to be paid out of those estates¹¹.

Where any separate estate of an insolvent member is insufficient for the payment in full of the separate expenses to be paid out of that estate, the unpaid balance forms part of the expenses to be paid out of the joint estate¹².

Where, after the transfer of any unpaid balance in accordance with these provisions, any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid must be apportioned equally between the other estates¹³. Where, after such an apportionment, one or more estates are insufficient for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates must continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between all the estates¹⁴.

The responsible insolvency practitioner may¹⁵, with the sanction of any creditors' committee¹⁶ or with the leave of the court obtained on application, pay out of the joint estate as part of the expenses to be paid out of that estate any expenses incurred for any separate estate of an insolvent member, or pay out of any separate estate of an insolvent member any part of the expenses incurred for the joint estate which affects that separate estate¹⁷.

1 I.e. in a case where the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended) applies: see para 1218 ante.

2 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

3 For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 For the meaning of 'insolvency order' see para 1191 note 1 ante.

5 Insolvency Act 1986 s 175; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 23. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 175 also

apply so as to modify s 328(1)-(3), (6) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 577, 584): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

6 For these purposes, 'joint estate' means the partnership property of an insolvent partnership in respect of which an order is made under *ibid* Pt IV (arts 7, 8) (as amended) (see paras 1204, 1218 ante) or Pt V (arts 9-11) (see paras 1254, 1260, 1266 post): art 2(1). For the meaning of 'partnership property' see para 1179 note 4 ante.

7 For these purposes, 'joint expenses' means expenses incurred in the winding up of an insolvent partnership or in the winding up of the business of an insolvent partnership and the administration of its property: *ibid* art 2(1).

8 For these purposes, 'separate estate' means the property of an insolvent member against whom an insolvency order has been made: *ibid* art 2(1).

9 For these purposes, 'separate expenses' means expenses incurred in the winding up of a corporate member, or in the bankruptcy of an individual member: *ibid* art 2(1). For the meaning of 'corporate member' see para 1191 note 1 ante; and for the meaning of 'individual member' see para 1191 note 1 ante.

10 Insolvency Act 1986 s 175; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

11 Insolvency Act 1986 s 175; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

12 Insolvency Act 1986 s 175; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

13 Insolvency Act 1986 s 175; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

14 Insolvency Act 1986 s 175; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

15 *Ie* without prejudice to the Insolvency Act 1986 s 175 (as modified): see the text to notes 11-14 supra.

16 *Ie* established under *ibid* s 141 (as modified): see para 1235 ante.

17 *Ibid* s 175; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1243. Priority of debts in joint estate and in separate estate.

1243. Priority of debts in joint estate and in separate estate.

The provisions described below apply¹ as regards priority of debts².

After payment of expenses³ the joint debts⁴ of the partnership must be paid out of its joint estate⁵ in the following order of priority:

- 1652 (1) the preferential debts⁶;
- 1653 (2) the debts which are neither preferential debts nor postponed debts⁷;
- 1654 (3) interest⁸ on the joint debts, other than postponed debts;
- 1655 (4) the postponed debts;
- 1656 (5) interest⁸ on the postponed debts⁹.

The responsible insolvency practitioner¹⁰ must adjust the rights among themselves of the members of the partnership as contributories and distribute any surplus to the members or, where applicable, to the separate estates¹¹ of the members, according to their respective rights and interests in it¹².

The debts referred to in each of heads (1) and (2) above rank equally between themselves, and in each case, if the joint estate is insufficient for meeting them, they abate in equal proportions between themselves¹³.

Where the joint estate is not sufficient for the payment of the joint debts in accordance with heads (1) and (2) above, the responsible insolvency practitioner must aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order¹⁴ has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the debts¹⁵ of the member¹⁶.

Where the joint estate is sufficient for the payment of the joint debts in accordance with heads (1) and (2) above but not for the payment of interest under head (3) above, the responsible insolvency practitioner must aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the interest on the separate debts¹⁷.

Where the joint estate is not sufficient for the payment of the postponed joint debts in accordance with head (4) above, the responsible insolvency practitioner must aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the postponed debts¹⁸ of the member¹⁹.

Where the joint estate is sufficient for the payment of the postponed joint debts in accordance with head (4) above but not for the payment of interest under head (5) above, the responsible insolvency practitioner must aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the interest²⁰ on the postponed debts²¹.

Where the responsible insolvency practitioner receives any distribution from the separate estate of a member in respect of a debt provable under these provisions²², that distribution becomes part of the joint estate and must be distributed in accordance with the order of priority set out above²³.

The separate estate of each member of the partnership against whom an insolvency order has been made is applicable, after payment of expenses²⁴, in payment of the separate debts of that member in the following order of priority:

- 1657 (a) the preferential debts;
- 1658 (b) the debts which are neither preferential debts nor postponed debts²⁵;
- 1659 (c) interest²⁶ on the separate debts²⁷;
- 1660 (d) the postponed debts of the member²⁸;
- 1661 (e) interest²⁹ on the postponed debts of the member³⁰.

The debts referred to in each of heads (a) and (b) above rank equally between themselves, and in each case, if the separate estate is insufficient for meeting them, they abate in equal proportions between themselves³¹.

Where the responsible insolvency practitioner receives any distribution from the joint estate or from the separate estate of another member of the partnership against whom an insolvency order has been made, that distribution becomes part of the separate estate and must be distributed in accordance with the order of priority set out above³².

The provisions described above are without prejudice to any provision of the Insolvency Act 1986 or of any other enactment concerning the ranking between themselves of postponed debts and interest on them, but in the absence of any such provision postponed debts and interest on them rank equally between themselves³³.

1 le in a case where the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended) applies: see para 1218 ante.

2 Insolvency Act 1986 s 175A(1) (ss 175A, 175B, 175C added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 23). The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The addition of the Insolvency Act 1986 ss 175A, 175B apply so as to modify s 175 (see paras 763, 1242 ante) and s 328(1)-(3), (6) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 577, 584): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

3 le in accordance with the Insolvency Act 1986 s 175 (as modified) (see para 1242 ante) and subject to s 175C(2) (as added) (see para 1244 post).

4 For the meaning of 'joint debt' see para 1210 note 11 ante.

5 For the meaning of 'joint estate' see para 1242 note 6 ante.

6 For the meaning of 'preferential debt' see para 763 ante.

7 For these purposes, 'postponed debt' means a debt the payment of which is postponed by or under any provisions of the Insolvency Act 1986 or of any other enactment: Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1).

8 Ie under the Insolvency Act 1986 s 189 (as modified): see para 1245 post.

9 Ibid s 175A(2) (as added: see note 2 supra).

10 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

11 For the meaning of 'separate estate' see para 1242 note 8 ante.

12 Insolvency Act 1986 s 175A(3) (as added: see note 2 supra).

13 Ibid s 175A(4) (as added: see note 2 supra).

14 For the meaning of 'insolvency order' see para 1191 note 1 ante.

15 Ie the debts of the member referred to in the Insolvency Act 1986 s 175B(1)(b) (as added): see head (b) in the text.

16 Ibid s 175A(5) (as added: see note 2 supra). For the purpose of establishing the value of any debt so provable by the responsible insolvency practitioner, that value may be estimated by the responsible insolvency practitioner in accordance with s 322 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 493) or, as the case may be, in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 175C(3) (as added: see note 2 supra).

17 Ibid s 175A(6) (as added: see note 2 supra). The interest on the separate debts is that referred to in s 175B(1)(c) (as added) (see head (c) in the text): s 175A(6) (as so added). For the meaning of 'separate debt' see para 1217 note 4 ante.

18 Ie the postponed debts of the member referred to in ibid s 175B(1)(d) (as added): see head (d) in the text.

19 Ibid s 175A(7) (as added: see note 2 supra). For the purpose of establishing the value of any debt provable by the responsible insolvency practitioner, that value may be estimated by the responsible insolvency practitioner in accordance with the Insolvency Act 1986 s 322 or, as the case may be, in accordance with the Insolvency Rules 1986, SI 1986/1925 (as amended): Insolvency Act 1986 s 175C(3) (as so added).

20 Ie the interest referred to in ibid s 175B(1)(e) (as added): see head (e) in the text.

21 Ibid s 175A(8) (as added: see note 2 supra).

22 Ie under ibid s 175A(5), (6), (7) or (8) (as added): see the text and notes 14-21 supra.

23 Ibid s 175A(9) (as added: see note 2 supra). The order of priority is that set out in s 175A(2) (as added) (see heads (1)-(5) in the text): s 175A(9) (as so added).

24 See note 3 supra.

25 Ie including any debt made provable under the Insolvency Act 1986 s 175A(5) (as added): see the text and notes 14-16 supra.

26 See note 8 supra.

27 Ie and interest under the Insolvency Act 1986 s 175A(6) (as added): see the text and note 17 supra.

28 Ie including any debt made provable under ibid s 175A(7) (as added): see supra.

29 See note 8 supra.

30 Insolvency Act 1986 s 175B(1) (as added: see note 2 supra). Interest under s 175B(1)(e) (as added) (see head (e) in the text) includes interest under s 175A(8) (as added) (see the text and notes 20-21 supra): s 175B(1) (as so added). The provisions contained in s 175B (as added) are subject to the provisions of the Partnership Act 1890 s 9 (see PARTNERSHIP vol 79 (2008) PARA 74) as respects the liability of the estate of a deceased member: Insolvency Act 1986 s 175A(1) (as so added).

31 Ibid s 175B(2) (as added: see note 2 supra).

32 Ibid s 175B(3) (as added: see note 2 supra). The order of priority is that set out in s 175B(1) (as added) (see heads (a)-(e) in the text): s 175B(3) (as so added).

33 Ibid s 175C(5) (as added: see note 2 supra)

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1244. Provisions generally applicable in distribution of joint and separate estates.

1244. Provisions generally applicable in distribution of joint and separate estates.

Distinct accounts must be kept of the joint estate¹ of the partnership and of the separate estate² of each member³ of that partnership against whom an insolvency order⁴ is made⁵.

No member of the partnership may prove for a joint⁶ or separate⁷ debt in competition with the joint creditors, unless the debt has arisen as a result of fraud, or in the ordinary course of a business carried on separately from the partnership business⁸.

Interest⁹ on preferential debts ranks equally with interest on debts which are neither preferential debts nor postponed debts¹⁰.

If any two or more members of an insolvent partnership constitute a separate partnership, the creditors of such separate partnership are deemed to be a separate set of creditors and subject to the same statutory provisions as the separate creditors of any member of the insolvent partnership¹¹.

Where any surplus remains after the administration of the estate of a separate partnership, the surplus must be distributed to the members or, where applicable, to the separate estates of the members of that partnership according to their respective rights and interests in it¹².

Neither the official receiver, the Secretary of State nor a responsible insolvency practitioner¹³ is entitled to remuneration or fees¹⁴ for his services in connection with the transfer of a surplus from the joint estate to a separate estate¹⁵, a distribution from a separate estate to the joint estate¹⁶, or a distribution¹⁷ from the estate of a separate partnership to the separate estates of the members of that partnership¹⁸.

1 For the meaning of 'joint estate' see para 1242 note 6 ante.

2 For the meaning of 'separate estate' see para 1242 note 8 ante.

3 For the meaning of 'member' see para 1171 note 2 ante.

4 For the meaning of 'insolvency order' see para 1191 note 1 ante.

5 Insolvency Act 1986 s 175C(1) (s 175C added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 23). The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The addition of the Insolvency Act 1986 s 175C applies so as to modify s 175 (see paras 763, 1242 ante) and s 328(1)-(3), (6) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 577, 584): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 23.

6 For the meaning of 'joint debt' see para 1210 note 11 ante.

7 For the meaning of 'separate debt' see para 1217 note 4 ante.

8 Insolvency Act 1986 s 175C(2) (as added: see note 5 supra).

9 Ie under ibid s 189 (as modified): see para 1245 post.

10 Ibid s 175C(4) (as added: see note 5 supra). For the meaning of 'postponed debt' see para 1243 note 7 ante.

11 Ibid s 175C(6) (as added: see note 5 supra).

12 Ibid s 175C(7) (as added: see note 5 supra).

13 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante. As to the official receiver see para 503 et seq ante. As to the Secretary of State see para 11 note 10 ante.

14 Ie under the Insolvency Rules 1986, SI 1986/1925 (as amended), or the Insolvency Proceedings (Fees) Order 2004, SI 2004/593 (replacing the Insolvency Fees Order 1986, SI 1986/2030) (revoked)) or the Insolvency Regulations 1994, SI 1994/2507 (as amended).

15 Ie under the Insolvency Act 1986 s 175A(3) (as added): see para 1243 ante.

16 Ie in respect of a claim referred to in ibid s 175A(5), (6), (7) or (8) (as added): see para 1243 ante.

17 Ie under ibid s 175C(7) (as added): see the text and note 12 supra.

18 Ibid s 175C(8) (as added: see note 5 supra); Interpretation Act 1978 s 17(2)(a).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1244 Provisions generally applicable in distribution of joint and separate estates

NOTE 14--SI 2004/593 amended: SI 2005/544, SI 2006/561, SI 2007/521, SI 2008/714, SI 2009/645.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1245. Interest on debts.

1245. Interest on debts.

In the winding up of an insolvent partnership or the winding up or bankruptcy, as the case may be, of any of its insolvent members¹, interest is payable² on any debt proved in the winding up or bankruptcy, including so much of any such debt as represents interest on the remainder³.

Interest is payable on the debts in question in respect of the periods during which they have been outstanding since the winding-up order was made against the partnership or any corporate member⁴, as the case may be, or the bankruptcy order was made against any individual member⁵.

The rate of interest payable under these provisions in respect of any debt⁶ is whichever is the greater of the rate payable on judgment debts⁷ on the day on which the winding-up or bankruptcy order, as the case may be, was made and the rate applicable to that debt apart from the winding up or bankruptcy⁸.

¹ For the meaning of 'insolvent member' see para 1191 note 2 ante.

² In accordance with the Insolvency Act 1986 s 189 (as modified) and ss 175A, 175B (as added) (see para 1243 ante).

³ Ibid s 189(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 24. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 189 also apply so as to modify s 328(4), (5) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 585): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 24.

⁴ For the meaning of 'corporate member' see para 1191 note 1 ante.

⁵ Insolvency Act 1986 s 189(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 24. For the meaning of 'individual member' see para 1191 note 1 ante.

⁶ The rate of interest so payable is defined as 'the official rate' for the purposes of any provision of the Insolvency Act 1986 in which that expression is used: s 189(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 24.

⁷ In the rate specified in the Judgments Act 1838 s 17 (as amended). The rate so specified is 8% per annum: s 17(1) (amended by the Civil Procedure Acts Repeal Act 1879 s 2, Schedule Pt I; the Statute Law Revision (No 2) Act 1888; the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, art 2; and the Civil Procedure (Modification of Enactments) Order 1998, SI 1998/2940, art 3(a), (b)).

⁸ Insolvency Act 1986 s 189(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 24.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1246. False representations to creditors.

1246. False representations to creditors.

Where insolvency orders¹ are made against an insolvent partnership and any insolvent member² or members of it³, any person, being a past or present officer⁴ of the partnership or a past or present officer, which for these purposes includes a shadow director⁵, of a corporate member⁶ against which an insolvency order has been made:

- 1662 (1) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the creditors of the partnership, or any of them, or of the creditors of any of its members, or any of such creditors, to an agreement with reference to the affairs of the partnership or of any of its members or to the winding up of the partnership or of a corporate member, or the bankruptcy of an individual member⁷; and
- 1663 (2) is deemed to have committed that offence if, prior to the winding up or bankruptcy, as the case may be, he has made any false representation, or committed any other fraud, for that purpose⁸.

A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁹.

1 For the meaning of 'insolvency order' see para 1191 note 1 ante.

2 For the meaning of 'insolvent member' see para 1191 note 2 ante.

3 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

4 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

5 For the meaning of 'shadow director' see para 5 note 3 ante.

6 For the meaning of 'corporate member' see para 1191 note 1 ante.

7 For the meaning of 'individual member' see para 1191 note 1 ante.

8 Insolvency Act 1986 s 211(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 25. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 211 also apply so as to modify s 356(2)(d) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 716): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 25.

9 Insolvency Act 1986 s 211(3), s 430, Sch 10; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(5), Sch 4 Pt II para 25. As to the statutory maximum see para 10 note 1 ante.

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1247. Appointment to office of the responsible insolvency practitioner or provisional liquidator.

1247. Appointment to office of the responsible insolvency practitioner or provisional liquidator.

The provisions described below apply with respect to the appointment of:

- 1664 (1) the responsible insolvency practitioner¹ of an insolvent partnership which is being wound up² and of one or more of its insolvent members³; or
- 1665 (2) a provisional liquidator of an insolvent partnership, or of any of its corporate members, against which a winding-up petition is presented⁴,

but are without prejudice to any enactment under which the official receiver is to be, or may be, the responsible insolvency practitioner or provisional liquidator⁵.

No person may be appointed as responsible insolvency practitioner unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and in relation to the insolvent member or members⁶.

No person may be appointed as provisional liquidator unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and in relation to any corporate member in respect of which he is appointed⁷.

If the appointment or nomination of any person to the office of responsible insolvency practitioner or provisional liquidator relates to more than one person, or has the effect that the office is to be held by more than one person, the appointment or nomination must declare whether any act required or authorised under any enactment to be done by the responsible insolvency practitioner or by the provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question⁸.

The appointment of any person as responsible insolvency practitioner takes effect only if that person accepts the appointment in accordance with the Insolvency Rules 1986⁹ but, subject to this, the appointment of any person as responsible insolvency practitioner takes effect at the time specified in his certificate of appointment¹⁰.

1 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 See note 2 supra.

5 Insolvency Act 1986 s 230; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 26. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The modifications to the Insolvency Act 1986 s 230 also apply so as to modify s 231 (see para 491 ante) and s 292 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2)).

(2002 Reissue) paras 316-317): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 26. As to the official receiver see para 503 et seq ante.

6 Insolvency Act 1986 s 230; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 26. As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post.

7 Insolvency Act 1986 s 230; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 26.

8 Insolvency Act 1986 s 230; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 26.

9 le the Insolvency Rules 1986, SI 1986/1925 (as amended).

10 Insolvency Act 1986 s 230; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 26.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1248. Conflicts of interest.

1248. Conflicts of interest.

If the responsible insolvency practitioner¹ of an insolvent partnership that is being wound up² and of one or more of its insolvent members³ is of the opinion at any time that there is a conflict of interest between his functions as liquidator of the partnership and his functions as responsible insolvency practitioner of any insolvent member, or between his functions as responsible insolvency practitioner of two or more insolvent members, he may apply to the court for directions⁴.

On such an application the court may, without prejudice to the generality of its power to give directions, appoint one or more insolvency practitioners either in place of the applicant to act as responsible insolvency practitioner of both the partnership and its insolvent member or members or to act as joint responsible insolvency practitioner with the applicant⁵.

1 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

2 ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 Insolvency Act 1986 s 230A(1) (s 230A added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 26). The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. The addition of the Insolvency Act 1986 s 230A also applies so as to modify s 231 (as amended) (see para 491 ante) and s 292 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 316-317): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 26.

5 Insolvency Act 1986 s 230A(2) (as added: see note 4 supra).

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1249. Getting in the partnership property.

1249. Getting in the partnership property.

Where insolvency orders¹ are made² in respect of an insolvent partnership and its insolvent member³ or members, or a provisional liquidator of an insolvent partnership and any of its corporate members⁴ is appointed⁵, any person who is or has been an officer⁶ of the partnership, or who is an executor or administrator of the estate of a deceased officer of the partnership, must deliver up to the office-holder⁷, for the purposes of the exercise of the office-holder's functions under the Insolvency Act 1986 and, where applicable, the Company Directors Disqualification Act 1986, possession of any partnership property⁸ which he holds for the purposes of the partnership⁹.

Where any person has in his possession or control any property, books, papers or records to which the partnership appears to be entitled, the court may require that person forthwith, or within such period as the court may direct, to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder or as the court may direct¹⁰.

Where the office-holder seizes or disposes of any property which is not partnership property, and at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled, whether in pursuance of an order of the court or otherwise, to seize or dispose of that property, the office-holder:

1666 (1) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence; and

1667 (2) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal¹¹.

1 For the meaning of 'insolvency order' see para 1191 note 1 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 For the meaning of 'insolvent member' see para 1191 note 2 ante.

4 For the meaning of 'corporate member' see para 1191 note 1 ante.

5 See note 2 supra.

6 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

7 For these purposes, 'office-holder' means the liquidator or the provisional liquidator, as the case may be: Insolvency Act 1986 s 234(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 27. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

8 For the meaning of 'partnership property' see para 1179 note 4 ante.

9 Insolvency Act 1986 s 234; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 27.

10 Insolvency Act 1986 s 234(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 27.

11 Insolvency Act 1986 s 234(3), (4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 27.

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1250. Meaning of 'individual member's estate'.

1250. Meaning of 'individual member's estate'.

Subject as follows, the estate of an individual member¹ for the purposes of the Insolvency Act 1986 comprises:

- 1668 (1) all property belonging to or vested in the individual member at the commencement of the bankruptcy²; and
- 1669 (2) any property which by virtue of any of the provisions of the Insolvency Act 1986 is comprised in that estate or is treated as falling within head (1) above³.

This does not apply to:

- 1670 (a) such tools, books, vehicles and other items of equipment as are not partnership property⁴ and as are necessary to the individual member for use personally by him in his employment, business or vocation;
- 1671 (b) such clothing, bedding, furniture, household equipment and provisions as are not partnership property and as are necessary for satisfying the basic domestic needs of the individual member and his family⁵,

nor to property held by the individual member on trust for any other person, or the right of nomination to a vacant ecclesiastical benefice⁶.

References in any provision of the Insolvency Act 1986 to property, in relation to an individual member, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the estate of the individual member and:

- 1672 (i) is so exercisable at a time after either the official receiver has had his release in respect of that estate⁷ or a final meeting summoned by the trustee of that estate⁸ has been held; or
- 1673 (ii) cannot be so exercised for the benefit of the individual member⁹.

A power exercisable over or in respect of property is deemed for the purposes of any provision of the Insolvency Act 1986 to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person, whether or not it becomes so exercisable at that time¹⁰.

For the purposes of any such provision of the Insolvency Act 1986, property comprised in an individual member's estate is so comprised subject to the rights of any person other than the individual member, whether as a secured creditor of the individual member or otherwise, in relation thereto, but disregarding any rights which have been given up in accordance with the Insolvency Rules 1986¹¹.

These provisions have effect subject to the provisions of any enactment not contained in the Insolvency Act 1986 under which any property is to be excluded from a bankrupt's estate¹².

- 1 For the meaning of 'individual member' see para 1191 note 1 ante.
- 2 As to when a bankruptcy commences see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 213.
- 3 Insolvency Act 1986 s 283(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 28. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.
- 4 For the meaning of 'partnership property' see para 1179 note 4 ante.
- 5 Insolvency Act 1986 s 283(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28. The Insolvency Act 1986 s 283(2) (as modified) is subject to s 308 (as amended) (certain excluded property reclaimable by trustee: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 392): s 283(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28.
- 6 Insolvency Act 1986 s 283(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28.
- 7 Ie under the Insolvency Act 1986 s 174(3) (as modified): see para 1241 ante. As to the official receiver see para 503 et seq ante.
- 8 Ie under ibid s 146 (as modified): see para 1237 ante.
- 9 Ibid s 283(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28.
- 10 Insolvency Act 1986 s 283(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28.
- 11 Insolvency Act 1986 s 283(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28. The rules referred to in the text are the Insolvency Rules 1986, SI 1986/1925 (as amended).
- 12 Insolvency Act 1986 s 283(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 28.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1251. Individual member; restrictions on dispositions of property.

1251. Individual member; restrictions on dispositions of property.

Where an individual member¹ is adjudged bankrupt², any disposition of property made by that member in the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting³ of the individual member's estate in a trustee is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court⁴. These provisions apply to a payment, whether in cash or otherwise, as they apply to a disposition of property and, accordingly, where any payment is void by virtue of these provisions, the person paid holds the sum paid for the individual member as part of his estate⁵.

These provisions do not give a remedy against any person:

- 1674 (1) in respect of any property or payment which he received before the commencement of the bankruptcy⁶ in good faith, for value and without notice that the petition had been presented; or
- 1675 (2) in respect of any interest in property which derives from an interest in respect of which there is⁷ no remedy⁸.

Where after the commencement of his bankruptcy the individual member has incurred a debt to a banker or other person by reason of the making of a payment which is void under these provisions, that debt is deemed for the purposes of any provision of the Insolvency Act 1986 to have been incurred before the commencement of the bankruptcy unless that banker or person had notice of the bankruptcy before the debt was incurred, or it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made⁹.

A disposition of property is void under these provisions notwithstanding that the property is not or, as the case may be, would not be comprised in the individual member's estate; but nothing in these provisions affects any disposition made by a person of property held by him on trust for any other person other than a disposition made by an individual member of property held by him on trust for the partnership¹⁰.

1 For the meaning of 'individual member' see para 1191 note 1 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

3 Insolvency Act 1986 s 284(1), (3); Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 29. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

4 Insolvency Act 1986 s 284(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 29.

5 Ie under the Insolvency Act 1986 Pt IX Ch II (ss 283-291) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

6 As to when a bankruptcy commences see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 213.

7 le by virtue of the Insolvency Act 1986 s 284(4) (as modified): see the text and note 8 infra.

8 Ibid s 284(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 29.

9 Insolvency Act 1986 s 284(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 29.

10 Insolvency Act 1986 s 284(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II para 29.

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1252. Liquidator's powers exercisable with sanction.

1252. Liquidator's powers exercisable with sanction.

Where an insolvent partnership is being wound up¹, the liquidator with the sanction of either the court or the liquidation committee has the following powers²:

- 1676 (1) power to pay any class of creditors in full;
- 1677 (2) power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the partnership, or whereby the partnership may be rendered liable;
- 1678 (3) power to compromise, on such terms as may be agreed:
- 17
 - 3. (a) all debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the partnership and a contributory³ or alleged contributory or other debtor or person apprehending liability to the partnership; and
 - 4. (b) all questions in any way relating to or affecting the partnership property⁴ or the winding up of the partnership,
- 18
 - 1679 and to take any security for the discharge of any such debt, liability or claim and give a complete discharge in respect of it;
 - 1680 (4) power to bring or defend any claim or other legal proceeding in the name and on behalf of any member of the partnership in his capacity as such or of the partnership;
 - 1681 (5) power to carry on the business of the partnership so far as may be necessary for its beneficial winding up⁵.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

2 As to liquidators see para 950 et seq ante; as to the liquidation committee see para 994 et seq ante. For the meaning of 'the court' see para 1191 note 2 ante.

3 For the meaning of 'contributory' see para 703 ante.

4 For the meaning of 'partnership property' see para 1179 note 4 ante.

5 Insolvency Act 1986 s 167, Sch 4 Pt I; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 30. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante. As to the application to insolvent partnerships of the provisions of the Insolvency Act 1986 relating to the powers of a liquidator and to the liquidation committee see para 1218 text and note 7 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1252 Liquidator's powers exercisable with sanction

NOTE 5--SI 1994/2421 Sch 4 Pt II para 30 amended: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(4) CREDITORS' ETC WINDING-UP PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Petition of Creditor etc where Concurrent Petitions Presented Against one or more Members/1253. Liquidator's powers exercisable without sanction.

1253. Liquidator's powers exercisable without sanction.

Where an insolvent partnership is being wound up¹, the liquidator has, without the sanction of the court or the liquidation committee, the following powers:

- 1682 (1) power to sell any of the partnership property² by public auction or private contract, with power to transfer the whole of it to any person or to sell the same in parcels;
- 1683 (2) power to do all acts and execute, in the name and on behalf of the partnership or of any member³ of the partnership in his capacity as such, all deeds, receipts and other documents;
- 1684 (3) power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt⁴ due from the bankrupt or insolvent, and rateably with the other separate creditors;
- 1685 (4) power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of any member of the partnership in his capacity as such or of the partnership, with the same effect with respect to the liability of the partnership or of any member of the partnership in his capacity as such as if the bill or note had been drawn, accepted, made or indorsed in the course of the partnership's business;
- 1686 (5) power to raise on the security of the partnership property any money requisite;
- 1687 (6) power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the partnership; and, in all such cases, the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself;
- 1688 (7) power to appoint an agent to do any business which the liquidator is unable to do himself;
- 1689 (8) power to do all such other things as may be necessary for winding up the partnership's affairs and distributing its property⁵.

¹ le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended): see para 1218 ante.

² For the meaning of 'partnership property' see para 1179 note 4 ante.

³ For the meaning of 'member' see para 1171 note 2 ante.

⁴ For the meaning of 'separate debt' see para 1217 note 4 ante. For the meaning of 'contributory' see para 703 ante.

⁵ Insolvency Act 1986 s 167, Sch 4 Pt II; Insolvent Partnerships Order 1994, SI 1994/2421, art 8(3), Sch 4 Pt II para 30. The provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies apply

to the winding up of an insolvent partnership on the petition of a creditor, liquidator or temporary administrator where insolvency petitions are presented by the petitioner against a member or former member of that partnership; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 (as amended): see para 1218 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1253 Liquidator's powers exercisable without sanction

NOTE 5--SI 1994/2421 Sch 4 Pt II para 30 amended: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member/1254. Application of statutory provisions.

(5) MEMBERS' PETITIONS

(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member

1254. Application of statutory provisions.

The provisions of the Insolvency Act 1986 described below apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a member¹ where no insolvency petition² is presented by the petitioner against a member of that partnership in his capacity as such:

1690 (1) the provisions relating to High Court and county court jurisdiction³ and to winding up of unregistered companies⁴, with modifications⁵; and

1691 (2) the other provisions of the Insolvency Act 1986 relating to the winding up of unregistered companies⁶, certain of which provisions are modified⁷.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 For the meaning of 'insolvency petition' see para 1191 note 2 ante.

3 I.e. the Insolvency Act 1986 s 117 (as amended and modified): see para 1255 post.

4 I.e. ibid s 221 (as amended and modified): see para 1256 et seq post.

5 I.e. as set out in the Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 (as amended).

6 I.e. the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified).

7 Insolvent Partnerships Order 1994, SI 1994/2421, art 9. These provisions as modified are set out in art 9(b), Sch 3 Pt I (paras 1-5) (as amended); and are dealt with in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a creditor where no concurrent petition is presented against a member. The provisions which apply after modification are the Insolvency Act 1986 s 220 (as amended) (see para 1205 ante), s 222 (see para 1211 ante) and s 223 (see para 1212 ante). As to the application to insolvent partnerships of subordinate legislation relating to winding up see the Insolvent Partnerships Order 1994, SI 1994/2421, art 18; and para 1168 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member/1255. High Court and county court jurisdiction.

1255. High Court and county court jurisdiction.

The High Court has jurisdiction to wind up any insolvent partnership as an unregistered company¹ if the partnership has, or at any time had, a principal place of business in England and Wales².

A petition for the winding up of an insolvent partnership³ may be presented to a county court in England and Wales if the partnership has, or at any time had, a principal place of business within the insolvency district⁴ of that court⁵.

The court only has jurisdiction to wind up an insolvent partnership if the business of the partnership has been carried on in England and Wales at any time in the period of three years ending with the day on which the petition for winding it up is presented⁶; and, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales: (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the petition for winding it up is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years, ending with the day on which the petition for winding it up is presented⁷.

Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed⁸ officer of the court must perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up⁹.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings¹⁰ concerning jurisdiction in cross-border insolvency proceedings in the European Union¹¹.

1 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 9: see para 1254 ante.

2 Insolvency Act 1986 s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 para 1. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a member where no insolvency petition is presented by the petitioner against a member of that partnership in his capacity as such; those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 (as amended): see para 1254 ante. The Insolvency Act 1986 s 117(1) (as modified) is subject to other provisions of s 117 (as modified) (see the text and notes 6, 7 infra): s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1.

3 See note 1 supra.

4 As to insolvency districts see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 7.

5 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1. This provision is subject to other provisions of the Insolvency Act 1986 s 117 (as modified) (see the text and notes 6, 7 infra): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1. The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and, for the purposes of that jurisdiction, may attach its district, or any part of it, to any other county court; and he may by statutory instrument revoke or vary any such order: Insolvency Act 1986 s 117(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1. In exercising such powers, the Lord Chancellor must provide that a county court is not

to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of the Insolvency Act 1986 Pts VIII-XI (ss 252-387) (as amended) (individual insolvency: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY): s 117(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

6 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1.

7 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1.

8 For the meaning of 'prescribed' see para 438 note 6 ante.

9 Insolvency Act 1986 s 117(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1.

10 le EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante.

11 Insolvency Act 1986 s 117(7); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 1 (amended by SI 2002/1308).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1255 High Court and county court jurisdiction

TEXT AND NOTES--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also s 19, Sch 7 para 4.

SI 1994/2421 Sch 5 para 1 further amended: SI 2006/680.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member/1256. Winding up of insolvent partnerships as unregistered companies.

1256. Winding up of insolvent partnerships as unregistered companies.

Any insolvent partnership which has, or at any time had, a principal place of business in England and Wales may be wound up¹ under the Insolvency Act 1986².

An insolvent partnership may not be wound up under the Insolvency Act 1986 if the business of the partnership has not been carried on in England and Wales at any time in the period of three years ending with the day on which the winding-up petition is presented³; and, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the winding-up petition is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the winding-up petition is presented⁴.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings⁵ concerning jurisdiction in cross-border insolvency proceedings in the European Union⁶.

No insolvent partnership may be wound up under the Insolvency Act 1986 voluntarily⁷.

¹ le subject to the Insolvency Act 1986 s 221 (as modified) (see the text to notes 3-4 infra), and the provisions of Pt V (ss 220-229) (as amended and modified) (see paras 1257-1259 post).

² Ibid s 221(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 para 2. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a member where no insolvency petition is presented by the petitioner against a member of that partnership in his capacity as such; those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 (as amended): see para 1254 ante.

³ Insolvency Act 1986 s 221(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 2.

⁴ Insolvency Act 1986 s 221(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 2.

⁵ le the EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante.

⁶ Insolvency Act 1986 s 221(3A) (added by the Insolvent Partnerships (Amendment) Order 2002, SI 2002/1308, arts 2, 5(1)).

⁷ Insolvency Act 1986 s 221(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 2.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1256 Winding up of insolvent partnerships as unregistered companies

NOTES--SI 1994/2421 Sch 5 para 2 amended: SI 2006/622.

NOTE 2--Insolvency Act 1986 s 221(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member/1257. Grounds for winding up insolvent partnerships as unregistered companies.

1257. Grounds for winding up insolvent partnerships as unregistered companies.

The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows:

- 1692 (1) the partnership is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- 1693 (2) the partnership is unable to pay its debts;
- 1694 (3) the court is of the opinion that it is just and equitable that the partnership should be wound up¹.

¹ Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 para 2. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a member where no insolvency petition is presented by the petitioner against a member of that partnership in his capacity as such; those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 (as amended): see para 1254 ante.

Every petition for the winding up of an insolvent partnership under the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified) must be verified by affidavit in the prescribed form: s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 2. For the prescribed form of affidavit see art 17, Sch 9 Form 2. As to the use of forms see para 1296 post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1257 Grounds for winding up insolvent partnerships as unregistered companies

NOTE 1--SI 1994/2421 Sch 5 para 2 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member/1258. Application of winding-up provisions.

1258. Application of winding-up provisions.

To the extent that they are applicable to the winding up of a company by the court in England and Wales on a member's petition or on a petition by the company, the provisions of the Insolvency Act 1986 and the Companies Act 1985 about winding up apply to the winding up of an insolvent partnership as an unregistered company, with certain exceptions, additions and modifications¹.

¹ Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 para 2. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a member where no insolvency petition is presented by the petitioner against a member of that partnership in his capacity as such; those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 (as amended): see para 1254 ante.

The exceptions and additions are those mentioned in the Insolvency Act 1986 s 221 (as amended and modified) (see para 1257 ante), s 221A (as added) (see para 1259 post); and the modifications are those specified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 3 Pt II (paras 6-10) (as amended) (see paras 1206, 1213 et seq ante): Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 para 2. The following provisions of the Insolvency Act 1986 do not apply: s 73(1) (see para 433 ante); s 74(2)(a)-(d), (3) (see paras 704-705, 715 ante); ss 75-78 (see paras 706, 713, 717 ante); s 83 (see para 714 ante); s 122 (as amended) (see para 1225 ante); s 123 (see para 446 ante); s 124(2), (3) (see para 454 ante); s 202 (see para 929 ante); s 203 (see para 930 ante); s 205 (see para 931 ante); and s 250 (see para 72 ante): s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 para 2.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1258 Application of winding-up provisions

NOTE 1--SI 1994/2421 Sch 5 para 2 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(i) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where No Concurrent Petition Presented Against Member/1259. Who may present petition.

1259. Who may present petition.

A petition for winding up an insolvent partnership may be presented by any member¹ of the partnership if the partnership consists of not less than eight members².

A petition for winding up an insolvent partnership may also be presented by any member of the partnership with the leave of the court, obtained on his application, if the court is satisfied that:

- 1695 (1) the member has served on the partnership, by leaving at a principal place of business of the partnership in England and Wales, or by delivering to an officer³ of the partnership, or by otherwise serving in such manner as the court may approve or direct, a written demand in the prescribed form⁴ in respect of a joint debt⁵ or debts exceeding £750 then due from the partnership but paid by the member, other than out of partnership property⁶;
- 1696 (2) the partnership has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the member's satisfaction⁷; and
- 1697 (3) the member has obtained a judgment, decree or order of any court against the partnership for reimbursement to him of the amount of the joint debt or debts so paid and all reasonable steps, other than insolvency proceedings⁸, have been taken by the member to enforce that judgment, decree or order⁹.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Insolvency Act 1986 s 221A(1) (s 221A added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 9(a), Sch 5 para 2). Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a member where no insolvency petition is presented by the petitioner against a member of that partnership in his capacity as such; those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 5 (as amended): see para 1254 ante.

3 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

4 For the meaning of 'joint debt' see para 1210 note 11 ante.

5 For the prescribed form of written demand see the Insolvent Partnerships Order 1994, SI 1994/2421, art 17, Sch 9 Form 10. As to the use of forms see para 1296 post.

6 Insolvency Act 1986 s 221A(2)(a) (as added: see note 2 supra). For the meaning of 'partnership property' see para 1179 note 4 ante. Section s 221A(2)(a) (as added) is deemed included in the list of provisions specified in s 416(1) for the purposes of the Secretary of State's order-making power under s 416: s 221A(3) (as so added). As to the Secretary of State see para 11 note 10 ante.

7 Ibid s 221A(2)(b) (as added: see note 2 supra).

8 For the meaning of 'insolvency proceedings' see para 1166 note 18 ante.

9 Insolvency Act 1986 s 221A(2)(c) (as added: see note 2 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members/1260. Application of statutory provisions.

(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members

1260. Application of statutory provisions.

Certain provisions of the Insolvency Act 1986¹ apply in relation to the winding up of an insolvent partnership as an unregistered company on a member's petition where insolvency petitions² are presented by the petitioner against the partnership and against all its members³ in their capacity as such⁴.

The provisions of the Insolvency Act 1986 relating to the winding up of companies registered under the Companies Act 1985⁵, in so far as they relate to winding up of companies by the court in England and Wales on a member's petition, apply in relation to the winding up of a corporate member⁶, in its capacity as such, of an insolvent partnership which is wound up by virtue of the provisions described above⁷.

Certain provisions of the Insolvency Act 1986⁸, in so far as they relate to the bankruptcy of individuals in England and Wales where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of an individual member⁹, in his capacity as such, of an insolvent partnership which is being wound up by virtue of the provisions described above¹⁰.

1 le (1) the Insolvency Act 1986 s 117 (as amended), s 124 (as amended), ss 125, 221 (as amended), s 264 (as amended), s 265 (as amended), s 271 and s 272, as modified and set out in the Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 (as amended) (see para 1261 et seq post); and (2) the Insolvency Act 1986 s 220 (as amended), s 225 (as amended), ss 227-229, s 220 (as amended) being modified and set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(b), Sch 4 Pt I para 2 (see para 1219 ante).

2 For the meaning of 'insolvency petition' see para 1191 note 2 ante.

3 For the meaning of 'member' see para 1171 note 2 ante.

4 Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1).

5 le the Insolvency Act 1986 Pt IV (ss 73-219) (as amended), Pt VI (ss 230-246) (as amended), Pt VII (ss 247-251) and Pts XII-XIX (ss 386-444) (as amended). Certain of the provisions referred to in the Insolvent Partnerships Order 1994, SI 1994/2421, art 10(2) and art 10(4) are modified in their application in relation to the corporate or individual members of insolvent partnerships and are set out as modified in Sch 4 Pt II (paras 5-30) (as amended) (see paras 1221, 1225 et seq ante), save that the provisions on summary administration of a debtor's estate apply in relation to the individual members of insolvent partnerships and are set out as modified in art 11, Sch 7 (as amended) (see para 1267 et seq post): art 10(6).

6 For the meaning of 'corporate member' see para 1191 note 1 ante.

7 Insolvent Partnerships Order 1994, SI 1994/2421, SI 1994/2421, art 10(2), (3).

8 le the Insolvency Act 1986 Pt IX (ss 264-371) (as amended), other than ss 273, 274, 287 and 297 (as amended), and Pts X-XIX (ss 372-444) (as amended). See also note 5 supra.

9 For the meaning of 'individual member' see para 1191 note 1 ante.

10 Insolvent Partnerships Order 1994, SI 1994/2421, SI 1994/2421, art 10(4), (5).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1260 Application of statutory provisions

NOTE 5--Words 'save that ... Sch 7' omitted: SI 1994/2421 art 10(6) (substituted by SI 2005/1516).

NOTE 7--SI 1994/2421 art 10(3) amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members/1261. High Court and county court jurisdiction.

1261. High Court and county court jurisdiction.

The High Court has jurisdiction to wind up any insolvent partnership as an unregistered company¹ if the partnership has, or at any time had, a principal place of business in England and Wales².

A petition for the winding up of an insolvent partnership³ may be presented to a county court in England and Wales if the partnership has, or at any time had, a principal place of business within the insolvency district⁴ of that court⁵.

The court only has jurisdiction to wind up an insolvent partnership if the business of the partnership has been carried on in England and Wales at any time in the period of three years ending with the day on which the petition for winding it up is presented⁶; and, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the petition for winding it up is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the petition for winding it up is presented⁷.

The court has jurisdiction to wind up a corporate member⁸, or make a bankruptcy order against an individual member⁹, of a partnership against which a petition has been presented¹⁰ if it has jurisdiction in respect of the partnership¹¹; but such petitions for the winding up of an insolvent partnership and the bankruptcy of one or more members of that partnership may not be presented to a district registry of the High Court¹². Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed¹³ officer of the court must perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up¹⁴.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings¹⁵ concerning jurisdiction in cross-border insolvency proceedings in the European Union¹⁶.

1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 10: see para 1260 ante.

2 Insolvency Act 1986 s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 1. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on a member's petition where insolvency petitions are presented by the petitioner against the partnership and against all its members in their capacity as such. Certain of those provisions are modified, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, arts 8, 10(1)(a), Sch 4 Pt I para 2, Sch 6 (as amended): see para 1260 et seq ante. The Insolvency Act 1986 s 117(1) (as modified) is subject to the provisions of s 117 (as modified) (see the text to notes 3-16 infra): s 117(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 1. The modifications to the Insolvency Act 1986 s 117 (as amended) also apply so as to modify s 265 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 125); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1.

3 See note 1 supra.

4 As to insolvency districts see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 7.

5 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1. This provision is subject to the provisions of the Insolvency Act 1986 s 117 (as modified) (see the text to notes 2 *supra*, and 6-14 *infra*): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1. The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and, for the purposes of that jurisdiction, may attach its district, or any part of it, to any other county court; and he may by statutory instrument revoke or vary any such order: Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1. In exercising such powers, the Lord Chancellor must provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of the Insolvency Act 1986 Pts VIII-XI (ss 252-385) (as amended) (individual insolvency: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 *et seq.* As to the abolition of the office of the Lord Chancellor see No 10 Downing Street Press Release *Modernising Government* (12 June 2003).

6 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1. This provision is subject to the Insolvency Act 1986 s 117 (as modified) (see the text to note 7 *infra*): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1.

7 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1.

8 For the meaning of 'corporate member' see para 1191 note 1 *ante*.

9 For the meaning of 'individual member' see para 1191 note 1 *ante*.

10 See note 1 *supra*.

11 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1. This provision is subject to the Insolvency Act 1986 s 117 (as modified) (see the text to note 12 *infra*): s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1.

12 Insolvency Act 1986 s 117; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1.

13 For the meaning of 'prescribed' see para 438 note 6 *ante*.

14 Insolvency Act 1986 s 117(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1.

15 *le* EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 *ante*.

16 Insolvency Act 1986 s 117(7) (added by the Insolvency Act 1986 (Amendment) No 2) Regulations 2002, SI 2002/1240, regs 3, 6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 1 (amended by SI 2002/1308).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1261 High Court and county court jurisdiction

TEXT AND NOTES--Insolvency Act 1986 s 117 further amended: Constitutional Reform Act 2005 Sch 4 para 186. See also s 19, Sch 7 para 4.

SI 1994/2421 Sch 6 para 1 further amended: SI 2006/680.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members/1262. Applications to wind up insolvent partnership and to wind up or bankrupt insolvent members.

1262. Applications to wind up insolvent partnership and to wind up or bankrupt insolvent members.

An application to the court by a member¹ of an insolvent partnership² for the winding up of the partnership as an unregistered company and the winding up or bankruptcy, as the case may be, of all its members must be by petition in the prescribed form³.

A petition for the winding up of the partnership under these provisions may only be presented by a member of the partnership on the grounds that the partnership is unable to pay its debts and if:

- 1698 (1) petitions are at the same time presented by that member for insolvency orders⁴ against every member of the partnership, including himself or itself; and
- 1699 (2) each member is willing for an insolvency order to be made against him or it and the petition against him or it contains a statement to this effect⁵.

However, if the court is satisfied, on application by any member of an insolvent partnership, that presentation of petitions under these provisions against the partnership and every member of it would be impracticable, the court may direct that petitions be presented against the partnership and such member or members of it as are specified by the court⁶.

The petitions against the partnership and all of its members must all be presented to the same court and, except as the court otherwise permits or directs, on the same day, and, except in the case of a petition in respect of an individual member, must be advertised in the prescribed form⁷.

Each petition must contain particulars of the other petitions being presented in relation to the partnership, identifying the partnership and members concerned⁸.

The hearing of the petition against the partnership fixed by the court must be in advance of the hearing of the petitions against the insolvent members⁹.

On the day appointed for the hearing of the petition against the partnership, the petitioner must, before the commencement of the hearing, hand to the court a notice in the prescribed form¹⁰, duly completed, of progress on the petitions presented¹¹.

Any person against whom a winding-up or bankruptcy petition has been presented in relation to the insolvent partnership is entitled to appear and to be heard on any petition for the winding up of the partnership¹².

A petitioner under these provisions may at the hearing withdraw the petition if:

- 1700 (a) he withdraws at the same time every other petition which he has presented under these provisions; and
- 1701 (b) he gives notice to the court at least three days before the date appointed for the hearing of the relevant petition of his intention to withdraw the petition¹³.

However, a petitioner need not comply with head (a) above in the case of a petition against a member, if the court is satisfied on application made to it by the petitioner that, because of difficulties in serving the petition or for any other reason, the continuance of that petition would be likely to prejudice or delay the proceedings on the petition which he has presented against the partnership or on any petition which he has presented against any other insolvent member¹⁴.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 10: see para 1260 ante.

3 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 2. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on a member's petition where insolvency petitions are presented by the petitioner against the partnership and against all its members in their capacity as such. Certain of those provisions are modified, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, arts 8, 10(1)(a), Sch 4 Pt I para 2, Sch 6 (as amended): see para 1260 et seq ante.

For the prescribed form of petition in relation to a partnership see art 17, Sch 9 Form 11 (as substituted); for the prescribed form in relation to a corporate member see Sch 9 Form 12 (as substituted); and for the prescribed form in relation to an individual member see Sch 9 Form 13 (as substituted). As to the use of forms see para 1296 post. The modifications to the Insolvency Act 1986 s 124 also apply so as to modify ss 264, 272 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 124, 159): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

4 For the meaning of 'insolvency order' see para 1191 note 1 ante.

5 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

6 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

7 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2. For the prescribed form of advertisement see Sch 9 Form 8.

8 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

9 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2. For the meaning of 'insolvent member' see para 1191 note 2 ante.

10 For the prescribed form of notice see *ibid* Sch 9 Form 9.

11 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

12 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

13 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

14 Insolvency Act 1986 s 124; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 2.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members/1263. Powers of court on hearing of petitions against insolvent partnership and members.

1263. Powers of court on hearing of petitions against insolvent partnership and members.

On hearing a petition¹ against an insolvent partnership or any of its insolvent members², the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any other order that it thinks fit; but the court may not refuse to make a winding-up order against the partnership or a corporate member³ on the ground only that the partnership property⁴ or, as the case may be, the member's assets have been mortgaged to an amount equal to or in excess of that property or those assets, or that the partnership has no property or the member no assets⁵.

An order under these provisions in respect of an insolvent partnership may contain directions as to the future conduct of any insolvency proceedings⁶ in existence against any insolvent member in respect of whom an insolvency order⁷ has been made⁸.

On the hearing of a petition against an insolvent member, the petitioner must draw the court's attention to the result of the hearing of the winding-up petition against the partnership and the provisions described below apply⁹.

If the court has neither made a winding-up order, nor dismissed the winding-up petition, against the partnership, the court may adjourn the hearing of the petition against the member until either event has occurred¹⁰.

If a winding-up order has been made against the partnership, the court may make a winding-up order against the corporate member in respect of which, or, as the case may be, a bankruptcy order against the individual member¹¹ in respect of whom, the insolvency petition was presented¹²; but, if no insolvency order is so made against any member within 28 days of the making of the winding-up order against the partnership, the proceedings against the partnership must be conducted as if the winding-up petition against the partnership had been presented by virtue of the provisions¹³ relating to the winding up of an insolvent partnership as an unregistered company on a creditor's petition where no concurrent petition is presented against a member, and the proceedings against any member must be conducted under the Insolvency Act 1986 without the modifications made by the Insolvent Partnerships Order 1994, with some exceptions¹⁴.

If the court has dismissed the winding-up petition against the partnership, the court may dismiss the winding-up petition against the corporate member or, as the case may be, the bankruptcy petition against the individual member; but, if an insolvency order is made against a member, the proceedings against that member must be conducted under the Insolvency Act 1986 without the modifications made by the Insolvent Partnerships Order 1994, with some exceptions¹⁵.

The court may dismiss a petition against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the winding-up order against the partnership¹⁶.

The court may dismiss a petition against an insolvent member who is a limited partner¹⁷, if the member lodges in court for the benefit of the creditors of the partnership sufficient money or

security to the court's satisfaction to meet his liability for the debts and obligations of the partnership, or the member satisfies the court that he is no longer under any liability in respect of the debts and obligations of the partnership¹⁸.

- 1 le under the Insolvency Act 1986 s 124 (as modified): see para 1262 ante.
- 2 For the meaning of 'insolvent member' see para 1191 note 2 ante.
- 3 For the meaning of 'corporate member' see para 1191 note 1 ante.
- 4 For the meaning of 'partnership property' see para 1179 note 4 ante.
- 5 Insolvency Act 1986 s 125(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 3. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on a member's petition where insolvency petitions are presented by the petitioner against the partnership and against all its members in their capacity as such. Certain of those provisions are modified, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, arts 8, 10(1)(a), Sch 4 Pt I para 2, Sch 6 (as amended): see para 1260 et seq ante. The Insolvency Act 1986 s 125(1) (as modified) is subject to s 125A (as added) (see the text and notes 9-18 infra): s 125(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 3. The modifications to the Insolvency Act 1986 s 125 and the addition of s 125A also apply so as to modify s 271 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 195); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 3.
- 6 For the meaning of 'insolvency proceedings' see para 1166 note 18 ante.
- 7 For the meaning of 'insolvency order' see para 1191 note 1 ante.
- 8 Insolvency Act 1986 s 125; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 3.
- 9 Insolvency Act 1986 s 125A(1) (s 125A added by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 3).
- 10 Insolvency Act 1986 s 125A(2) (as added: see note 9 supra).
- 11 For the meaning of 'individual member' see para 1191 note 1 ante.
- 12 Insolvency Act 1986 s 125A(3) (as added: see note 9 supra).
- 13 le the Insolvent Partnerships Order 1994, SI 1994/2421, art 7 (as amended): see para 1204 et seq ante.
- 14 Insolvency Act 1986 s 125A(4) (as added: see note 9 supra). The modifications to the Insolvency Act 1986 made by the Insolvent Partnerships Order 1994, SI 1994/2421, which apply to proceedings against any member are those made to the Insolvency Act 1986 ss 168, 303 by the Insolvent Partnerships Order 1994, SI 1994/2421, art 14 (see para 1294 post): Insolvency Act 1986 s 125A(4) (as so added).
- 15 Ibid s 125A(5) (as added: see note 9 supra). The modifications to the Insolvency Act 1986 made by the Insolvent Partnerships Order 1994, SI 1994/2421, which apply to proceedings against any member are those made to the Insolvency Act 1986 ss 168, 303 by the Insolvent Partnerships Order 1994, SI 1994/2421, art 14 (see para 1294 post): Insolvency Act 1986 s 125A(5) (as so added).
- 16 Ibid s 125A(6) (as added: see note 9 supra).
- 17 For the meaning of 'limited partner' see para 1228 note 20 ante.
- 18 Insolvency Act 1986 s 125A(7) (as added: see note 9 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members/1264. Winding up of insolvent partnerships as unregistered companies.

1264. Winding up of insolvent partnerships as unregistered companies.

Any insolvent partnership which has, or at any time had, a principal place of business in England and Wales may be wound up¹ under the Insolvency Act 1986². The circumstances in which an insolvent partnership may be wound up as an unregistered company are that the partnership is unable to pay its debts³.

An insolvent partnership may not be wound up under the Insolvency Act 1986 if the business of the partnership has not been carried on in England and Wales at any time in the period of three years ending with the day on which the winding-up petition is presented⁴; and, if an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court does not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales (1) in the case of a partnership with a principal place of business in Scotland, at any time in the period of one year ending with the day on which the winding-up petition is presented; or (2) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of three years ending with the day on which the winding-up petition is presented⁵.

These provisions are subject to the provisions in the European Regulation on Insolvency Proceedings⁶ concerning jurisdiction in cross-border insolvency proceedings in the European Union⁷.

No insolvent partnership may be wound up under the Insolvency Act 1986 voluntarily⁸.

1 Ie subject to the Insolvency Act 1986 s 221 (as modified) (set the text to notes 4-5 infra) and the provisions of Pt V (ss 220-229) (as amended and modified) (see para 1265 post).

2 Ibid s 221(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 4. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on a member's petition where insolvency petitions are presented by the petitioner against the partnership and against all its members in their capacity as such. Certain of those provisions are modified, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, arts 8, 10(1)(a), Sch 4 Pt I para 2, Sch 6 (as amended): see para 1260 et seq ante.

3 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4. Every petition for the winding up of an insolvent partnership under the Insolvency Act 1986 Pt V (as amended and modified) must be verified by affidavit in the prescribed form: s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4. For the prescribed form of affidavit see art 17, Sch 9 Form 2. As to the use of forms see para 1296 post.

4 Insolvency Act 1986 s 221(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4.

5 Insolvency Act 1986 s 221(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4.

6 Ie the EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3: see para 48 ante.

7 Insolvency Act 1986 s 221(3A) (added by the Insolvent Partnerships (Amendment) Order 2002, SI 2002/1308, arts 2, 5(1)).

8 Insolvency Act 1986 s 221(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1264 Winding up of insolvent partnerships as unregistered companies

NOTES--SI 1994/2421 Sch 6 para 4 amended: SI 2006/622.

NOTE 2--Insolvency Act 1986 s 221(1) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(ii) Winding Up of Insolvent Partnership as Unregistered Company on Member's Petition where Concurrent Petitions Presented Against All Members/1265. Application of winding up provisions.

1265. Application of winding up provisions.

To the extent that they are applicable to the winding up of a company by the court in England and Wales on a member's¹ petition, the provisions of the Insolvency Act 1986 and the Companies Act 1985 about winding up apply to the winding up of an insolvent partnership as an unregistered company, with certain exceptions, additions and modifications².

Unless the contrary intention appears, the members of the partnership against whom insolvency orders are made³ are not to be treated as contributories for the purposes of the Insolvency Act 1986⁴.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 4. Certain provisions of the Insolvency Act 1986 apply in relation to the winding up of an insolvent partnership as an unregistered company on a member's petition where insolvency petitions are presented by the petitioner against the partnership and against all its members in their capacity as such. Certain of those provisions are modified, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, arts 8, 10(1)(a), Sch 4 Pt I para 2, Sch 6 (as amended): see para 1260 et seq ante.

The modifications referred to in the text are those specified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 4 Pt II (paras 5-30) (as amended and modified) (see paras 1221, 1225 et seq ante): Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, art 10(1)(a), Sch 6 para 4. As to the exceptions and additions referred to in the text see also the text to note 4 infra; and para 1264 text and note 7 ante. The following provisions of the Insolvency Act 1986 do not apply: s 73(1) (see para 433 ante); s 74(2)(a)-(d), (3) (see paras 704-705, 715 ante); ss 75-78 (see paras 706, 713, 717 ante); s 83 (see para 714 ante); s 124(2), (3) (see para 454 ante); s 154 (see para 831 ante); s 202 (see para 929 ante); s 203 (see para 930 ante); s 205 (see para 931 ante); and s 250 (see para 72 ante): s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4.

3 ie by virtue of ibid art 10: see para 1260 ante.

4 Insolvency Act 1986 s 221; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 6 para 4.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1265 Application of winding up provisions

NOTES--SI 1994/2421 Sch 6 para 4 amended: SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1266. Application of statutory provisions.

(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition

1266. Application of statutory provisions.

In general, the statutory provisions of the Insolvency Act 1986 relating to bankruptcy¹, in so far as they relate to the insolvency of individuals in England and Wales where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members² of an insolvent partnership where those members jointly present a petition to the court for orders to be made for the bankruptcy of each of them in his capacity as a member of the partnership, and the winding up of the partnership business and administration of its property³, without the partnership being wound up⁴ as an unregistered company⁵.

Certain of those provisions⁶ are modified in their application in relation to the individual members of insolvent partnerships⁷.

¹ I.e. the Insolvency Act 1986 Pt IX (ss 264-371) (as amended), other than ss 273, 274, 287, and Pts X-XIX (ss 372-444) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

² For the meaning of 'individual member' see para 1191 note 1 ante.

³ For the meaning of 'partnership property' see para 1179 note 4 ante.

⁴ I.e. under the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified): see para 1147 et seq ante.

⁵ Insolvent Partnerships Order 1994, SI 1994/2421, art 11(1), (2).

⁶ I.e. the Insolvency Act 1986 ss 264-266 (as amended), s 272, s 275 (repealed), s 283 (as amended), s 284, s 290, ss 292-294 (as amended), ss 295-296, ss 297-298 (as amended), s 299, s 300 (as amended), ss 301, s 305, 312, 328, 331 and s 387 (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

⁷ Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 1(1), (2). As to the modifications see Sch 7 (as amended); and para 1267 et seq post.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1267. Presentation of joint bankruptcy petition.

1267. Presentation of joint bankruptcy petition.

A joint bankruptcy petition¹ may be presented to the court² by all the members³ of an insolvent partnership in their capacity as such provided that all the members are individuals and none of them is a limited partner⁴.

A petition may not be presented under these provisions by the members of an insolvent partnership if the partnership has permission⁵ to accept deposits, other than such a permission only for the purpose of carrying on another regulated activity in accordance with that permission⁶, or continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987⁷.

The petition must be in the prescribed form⁸ and must contain a request that the trustee is to wind up the partnership business and administer the partnership property⁹ without the partnership being wound up¹⁰ as an unregistered company¹¹.

The petition must either be accompanied by an affidavit in the prescribed form¹² made by the member who signs the petition, showing that all the members are individual members, and that none of them is a limited partner, and that they concur in the presentation of the petition, or contain a statement that all the members are individual members and be signed by all the members¹³.

On presentation of a petition under these provisions, the court may make orders in the prescribed form¹⁴ for the bankruptcy of the members and the winding up of the partnership business and administration of its property¹⁵.

1 For these purposes, 'joint bankruptcy petition' means a petition by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11 (see para 1266 ante): art 2(1).

2 I.e. by virtue of *ibid* art 11.

3 For the meaning of 'member' see para 1171 note 2 ante.

4 Insolvency Act 1986 s 264; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 2. This provision is subject to s 266 (as modified) (see para 1269 text to notes 1-3 post): s 264; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 2. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. For the meaning of 'limited partner' see para 1228 note 20 ante.

5 I.e. under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (as amended): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 97, 348 et seq.

6 Insolvency Act 1986 s 264; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 2 (amended by SI 2001/3649). This provision must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 2 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 84, 85): Insolvency Act 1986 s 264(2A) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 469).

7 Insolvency Act 1986 s 264(2)(b); modified by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 2 (amended by SI 2001/3649). The Banking Act 1987 was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

8 For the prescribed form of petition see the Insolvent Partnerships Order 1994, SI 1994/2421, art 17, Sch 9 Form 14 (substituted by SI 2002/1308). As to use of forms see para 1296 post.

9 For the meaning of 'partnership property' see para 1179 note 4 ante.

10 le under the Insolvency Act 1986 Pt V (ss 220-229) (as amended and modified): see para 1147 et seq ante.

11 Ibid s 264; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 2.

12 For the prescribed form of affidavit see ibid Sch 9 Form 15.

13 Insolvency Act 1986 s 264; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 2.

14 For the prescribed form of bankruptcy orders see ibid Sch 9 Form 16 (substituted by SI 2002/1308).

15 Insolvency Act 1986 s 264; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 2.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1268. Conditions to be satisfied in respect of members.

1268. Conditions to be satisfied in respect of members.

A joint bankruptcy petition¹ may be presented to the High Court, other than to a district registry of that court, if the partnership has, or at any time had, a principal place of business in England and Wales, or to a county court in England and Wales if the partnership has, or at any time had, a principal place of business within the insolvency district of that court²; but a joint bankruptcy petition may not be presented to the court³ unless the business of the partnership has been carried on in England and Wales at any time in the period of three years ending with the day on which the joint bankruptcy petition is presented⁴.

¹ I.e. by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante. For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

² Insolvency Act 1986 s 265; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 3. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to insolvency districts see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 7.

³ See note 1 supra.

⁴ Insolvency Act 1986 s 265; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 3.

UPDATE

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1269. Other preliminary conditions.

1269. Other preliminary conditions.

If the court is satisfied, on application by any member¹ of an insolvent partnership, that the presentation of the petition² by all the members of the partnership would be impracticable, the court may direct that the petition be presented by such member or members as are specified by the court³.

A joint bankruptcy petition⁴ may not be withdrawn without the leave of the court⁵.

The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a joint bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit⁶.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 ie under the Insolvency Act 1986 s 264 (as modified): see para 1267 text to notes 1-4 ante.

3 Ibid s 266; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 4. Certain provisions of the Insolvency Act 1986 relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

4 For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

5 Insolvency Act 1986 s 266(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 4.

6 Insolvency Act 1986 s 266(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 4. The rules referred to in the text are the Insolvency Rules 1986, SI 1986/1925 (as amended).

UPDATE

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The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1270. Grounds of joint bankruptcy petition.

1270. Grounds of joint bankruptcy petition.

A joint bankruptcy petition¹ may be presented to the court by the members² of a partnership only on the grounds that the partnership is unable to pay its debts³.

The petition must be accompanied by a statement of each member's affairs in the prescribed form⁴ and a statement of the affairs of the partnership in the prescribed form⁵ sworn by one or more members of the partnership⁶.

The statements of affairs required under these provisions must contain particulars of the member's or, as the case may be, partnership's creditors, debts and other liabilities and of their assets and such other information as is required by the relevant prescribed form⁷.

1 For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

2 For the meaning of 'member' see para 1171 note 2 ante.

3 Insolvency Act 1986 s 272(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 5. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

4 For the prescribed form of statement see *ibid* art 17, Sch 9 Form 17. As to the use of forms see para 1296 post.

5 For the prescribed form of statement see *ibid* Sch 9 Form 18.

6 Insolvency Act 1986 s 272(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 5.

7 Insolvency Act 1986 s 272; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 5.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1271. Summary administration.

1271. Summary administration.

Where:

- 1702 (1) orders have been made against the members¹ of an insolvent partnership²; and
- 1703 (2) it appears to the court that the aggregate amount of the unsecured joint debts³ of the partnership and unsecured separate debts⁴ of the member concerned is less than the small bankruptcies level⁵, and that within the period of five years ending with the presentation of the joint bankruptcy petition⁶ the member concerned has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs,

the court may, if it appears to it appropriate to do so, issue a certificate for the summary administration of any member's estate⁷.

The court may at any time revoke a certificate issued under these provisions if it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued⁸.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.

3 For the meaning of 'joint debt' see para 1210 note 11 ante.

4 For the meaning of 'separate debt' see para 1217 note 4 ante.

5 Ie the level prescribed for the purposes of the Insolvency Act 1986 s 273 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 200), as s 273 applies apart from the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended).

6 For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

7 Insolvency Act 1986 s 275; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 6. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

8 Insolvency Act 1986 s 275; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 6.

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1272. Meaning of 'member's estate'.

1272. Meaning of 'member's estate'.

Subject as follows, a member's¹ estate for the purposes of the Insolvency Act 1986 comprises:

- 1704 (1) all property belonging to or vested in the member at the commencement of the bankruptcy²; and
- 1705 (2) any property which by virtue of any of the provisions of the Insolvency Act 1986 is comprised in that estate or is treated as falling within head (1) above³.

This does not apply to:

- 1706 (a) such tools, books, vehicles and other items of equipment as are not partnership property⁴ and as are necessary to the member for use personally by him in his employment, business or vocation;
- 1707 (b) such clothing, bedding, furniture, household equipment and provisions as are not partnership property and as are necessary for satisfying the basic domestic needs of the member and his family⁵,

nor do the above provisions apply to property held by the member on trust for any other person, or the right of nomination to a vacant ecclesiastical benefice⁶.

References in any provision of the Insolvency Act 1986 to property, in relation to a member, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the member's estate and:

- 1708 (i) is so exercisable at a time after either the official receiver has had his release in respect of that estate⁷ or a meeting summoned by the trustee of that estate⁸ has been held; or
- 1709 (ii) cannot be so exercised for the benefit of the member⁹.

A power exercisable over or in respect of property is deemed for the purposes of any provision of the Insolvency Act 1986 to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person, whether or not it becomes so exercisable at that time¹⁰.

For the purposes of any such provision of the Insolvency Act 1986, property comprised in a member's estate is so comprised subject to the rights of any person other than the member, whether as a secured creditor of the member or otherwise, in relation thereto, but disregarding any rights which have been given up in accordance with the Insolvency Rules 1986¹¹.

These provisions have effect subject to the provisions of any enactment not contained in the Insolvency Act 1986 under which any property is to be excluded from a bankrupt's estate¹².

1 For the meaning of 'member' see para 1171 note 2 ante.

2 As to when a bankruptcy commences see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 213.

3 Insolvency Act 1986 s 283(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 7. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

4 For the meaning of 'partnership property' see para 1179 note 4 ante.

5 Insolvency Act 1986 s 283(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7. The Insolvency Act 1986 s 283(2) (as modified) is subject to s 308 (as amended) (certain excluded property reclaimable by trustee: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 392): s 283(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7.

6 Insolvency Act 1986 s 283(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7.

7 le under the Insolvency Act 1986 s 299(2) (as modified): see para 1281 post.

8 le under ibid s 331 (as modified): see para 1290 post.

9 Ibid s 283(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7.

10 Insolvency Act 1986 s 283(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7.

11 Insolvency Act 1986 s 283(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7. The rules referred to in the text are the Insolvency Rules 1986, SI 1986/1925 (as amended).

12 Insolvency Act 1986 s 283(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 7.

UPDATE

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1273. Restrictions on dispositions of property.

Where a member¹ is adjudged bankrupt on a joint bankruptcy petition², any disposition of property made by that member in the period beginning with the day of the presentation of the joint bankruptcy petition and ending with the vesting³ of the member's estate in a trustee is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court⁴.

These provisions apply to a payment, whether in cash or otherwise, as they apply to a disposition of property and, accordingly, where any payment is void by virtue of these provisions, the person paid must hold the sum paid for the member as part of his estate⁵.

These provisions do not give a remedy against any person:

- 1710 (1) in respect of any property or payment which he received before the commencement of the bankruptcy⁶ in good faith, for value, and without notice that the petition had been presented; or
- 1711 (2) in respect of any interest in property which derives from an interest in respect of which there is⁷ no remedy⁸.

Where after the commencement of his bankruptcy the member has incurred a debt to a banker or other person by reason of the making of a payment which is void under these provisions, that debt is deemed for the purposes of any provision of the Insolvency Act 1986 to have been incurred before the commencement of the bankruptcy unless that banker or person had notice of the bankruptcy before the debt was incurred, or it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made⁹.

A disposition of property is void under these provisions notwithstanding that the property is not or, as the case may be, would not be comprised in the member's estate; but nothing in these provisions affects any disposition made by a person of property held by him on trust for any other person other than a disposition made by a member of property held by him on trust for the partnership¹⁰.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

3 Insolvency Act 1986 s 284(1), (3); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 8. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

4 Insolvency Act 1986 s 284(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 8.

5 Ie under the Insolvency Act 1986 Pt IX Ch IV (ss 305-335) (as amended and modified): see para 1284 et seq post.

6 As to when a bankruptcy commences see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 213.

7 le by virtue of the Insolvency Act 1986 s 284(4) (as modified): see the text and note 8 infra.

8 Ibid s 284(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 8.

9 Insolvency Act 1986 s 284(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 8.

10 Insolvency Act 1986 s 284(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 8.

UPDATE

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1274. Public examination of member.

Where orders have been made against the members¹ of an insolvent partnership on a joint bankruptcy petition², the official receiver may at any time before the discharge of any such member apply to the court for the public examination of that member³.

Unless the court otherwise orders, the official receiver must make such an application if notice requiring him to do so is given to him, in accordance with the Insolvency Rules 1986, by one of the creditors of the member concerned with the concurrence of not less than one-half, in value, of those creditors, including the creditor giving notice⁴.

On an application for a public examination by the official receiver, the court must direct that a public examination of the member be held on a day appointed by the court; and the member must attend on that day and be publicly examined as to his affairs, dealings and property and as to those of the partnership⁵.

The following may take part in the public examination of the member and may question him concerning the matters mentioned above, namely:

- 1712 (1) the official receiver;
- 1713 (2) the trustee of the member's estate, if his appointment has taken effect;
- 1714 (3) any person who has been appointed as special manager of the member's estate or business or of the partnership property⁶ or business;
- 1715 (4) any creditor of the member who has tendered a proof in the bankruptcy⁷.

On an application for a public examination by the official receiver, the court may direct that the public examination of a member be combined with the public examination of any other person⁸.

If a member without reasonable excuse fails at any time to attend his public examination under these provisions, he is guilty of a contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject⁹.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

3 Insolvency Act 1986 s 290(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 9. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to the official receiver see para 503 et seq ante.

4 Insolvency Act 1986 s 290(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 9. As to the giving of notice see the Insolvency Rules 1986, SI 1986/1925 (as amended).

5 Insolvency Act 1986 s 290(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 9.

6 For the meaning of 'partnership property' see para 1179 note 4 ante.

- 7 Insolvency Act 1986 s 290(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 9.
- 8 Insolvency Act 1986 s 290; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 9.
- 9 Insolvency Act 1986 s 290(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 9.

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1166-1301 Insolvent Partnerships

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1275. Power to appoint trustee; conflicts of interest.

The power to appoint a person as both trustee of the estates of the members¹ of an insolvent partnership against whom orders are made on a joint bankruptcy petition² and as trustee of the partnership is exercisable by a combined general meeting of the creditors of the members and of the partnership or³ by the Secretary of State⁴.

No person may be appointed as trustee of the members' estates and as trustee of the partnership unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and to each of the members⁵.

Any power to appoint a person as trustee of the members' estates and of the partnership includes power to appoint two or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others⁶.

The appointment of any person as trustee of the members' estates and of the partnership takes effect only if that person accepts the appointment in accordance with the Insolvency Rules 1986; but, subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment⁷.

The provisions described above are without prejudice to the provisions⁸ under which the official receiver is, in certain circumstances, to be trustee of the members' estates and of the partnership⁹.

If the trustee of the members' estates and of the partnership is of the opinion at any time that there is a conflict of interest between his functions as trustee of the members' estates and his functions as trustee of the partnership, or between his functions as trustee of the estates of two or more members, he may apply to the court for directions¹⁰. On such an application the court may, without prejudice to the generality of its power to give directions, appoint one or more insolvency practitioners either in place of the applicant to act both as trustee of the members' estates and as trustee of the partnership, or to act as joint trustee with the applicant¹¹.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 For the meaning of 'joint bankruptcy petition' see para 1267 note 1 ante.

3 Ie under the Insolvency Act 1986 s 295(2) (as modified) (see para 1277 post), s 296(2) (as modified) (see para 1278 post) or s 300(6) (as modified) (see para 1282 post).

4 Ibid s 292(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 10. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to the Secretary of State see para 11 note 10 ante.

5 Insolvency Act 1986 s 292(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 10. As to insolvency practitioners and their qualification see para 8 et seq ante. For the meaning of 'act as an insolvency practitioner' see para 1295 post.

6 Insolvency Act 1986 s 292(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 10.

7 Insolvency Act 1986 s 292(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 10. The rules referred to in the text are the Insolvency Rules 1986, SI 1986/1925 (as amended).

8 le the provisions of the Insolvency Act 1986 Pt IX Ch III (ss 292-304) (as modified): see para 1276 et seq post.

9 Ibid s 292(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 10.

10 Insolvency Act 1986 s 292A(1) (s 292A added by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 10).

11 Insolvency Act 1986 s 292A(2) (as added: see note 10 supra).

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1276. Summoning of meeting to appoint trustee.

1276. Summoning of meeting to appoint trustee.

Where insolvency orders are made¹, the official receiver, by virtue of his office, becomes the trustee of the estates of the members² and the trustee of the partnership and continues in office until another person becomes³ trustee⁴.

The official receiver is, by virtue of his office, the trustee of the estates of the members and the trustee of the partnership during any vacancy⁵.

At any time when he is trustee, the official receiver may summon a combined meeting of the creditors of the members and the creditors of the partnership, for the purpose of appointing a trustee in place of the official receiver⁶.

It is the duty of the official receiver:

- 1716 (1) as soon as practicable in the period of 12 weeks beginning with the day on which the first order was made⁷ to decide whether to exercise his power to summon such a meeting; and
- 1717 (2) if, in pursuance of head (1) above, he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to those creditors of the members and those of the partnership who are known to the official receiver or identified in a statement of affairs⁸ submitted to him; and
- 1718 (3) whether or not he has decided to exercise that power, to exercise his power to summon such a meeting if he is at any time requested to do so by one-quarter, in value, of either the creditors of any member against whom an insolvency order has been made, or the partnership's creditors,

and accordingly, where the duty imposed by head (3) above arises before the official receiver has performed a duty imposed by head (1) or head (2) above, he is not required to perform the latter duty⁹.

A notice given under head (2) above to the creditors must contain an explanation of the creditors' power under head (3) above to require the official receiver to summon a combined meeting of the creditors of the partnership and of the members against whom insolvency orders have been made¹⁰.

If the official receiver, in pursuance of head (1) above, has decided to exercise his power to summon a meeting, he must hold that meeting in the period of four months beginning with the day on which the first order¹¹ was made¹².

If, whether or not he has decided to exercise that power, the official receiver is requested, in accordance with the provisions of head (3) above, to exercise his power to summon a meeting, he must hold that meeting in accordance with the Insolvency Rules 1986¹³.

Where a meeting of creditors of the partnership and of the members has been held, and an insolvency order is subsequently made against a further insolvent member¹⁴, any person chosen at the meeting to be responsible insolvency practitioner¹⁵ in place of the official receiver must also be the responsible insolvency practitioner of the member against whom the

subsequent order is made, and the duties of the official receiver¹⁶ described above do not arise¹⁷.

- 1 le by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.
- 2 For the meaning of 'member' see para 1171 note 2 ante.
- 3 le under the provisions of the Insolvency Act 1986 Pt IX (ss 264-371) (as amended and modified).
- 4 Ibid s 293; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 11. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. The modifications to the Insolvency Act 1986 s 293 also apply to modify s 294 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 319): Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11. As to the official receiver see para 503 et seq ante.
- 5 Insolvency Act 1986 s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.
- 6 Insolvency Act 1986 s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.
- 7 See note 1 supra.
- 8 le a statement of affairs submitted under the Insolvency Act 1986 s 272 (as modified): see para 1270 ante.
- 9 Ibid s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.
- 10 Insolvency Act 1986 s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.
- 11 See note 1 supra.
- 12 Insolvency Act 1986 s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.
- 13 Insolvency Act 1986 s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.
- 14 For the meaning of 'insolvent member' see para 1191 note 2 ante.
- 15 For the meaning of 'responsible insolvency practitioner' see para 1204 note 2 ante.
- 16 le the duties set out in the Insolvency Act 1986 s 293 (as modified): see the text and notes 7-9 supra.
- 17 Ibid s 293; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 11.

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1277. Failure of meeting to appoint trustee.

1277. Failure of meeting to appoint trustee.

If a meeting of creditors¹ is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State².

On a reference made in pursuance of that decision, the Secretary of State must either make an appointment or decline to make one³.

If the official receiver decides not to refer the need for an appointment to the Secretary of State, or on such a reference the Secretary of State declines to make an appointment, the official receiver must give notice of his decision or, as the case may be, of the Secretary of State's decision to the court⁴.

1 le a meeting summoned under the Insolvency Act 1986 s 293 (as modified): see para 1276 ante.

2 Ibid s 295(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 12. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to the Secretary of State see para 11 note 10 ante. As to the official receiver see para 503 et seq ante.

3 Insolvency Act 1986 s 295(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 12.

4 Insolvency Act 1986 s 295(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 12.

UPDATE

1166-1301 Insolvent Partnerships

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1278. Appointment of trustee by Secretary of State.

At any time when the official receiver is the trustee of the members' estates and of the partnership¹ he may apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver².

On such an application the Secretary of State must either make an appointment or decline to make one³.

Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application or on a reference⁴ made to him⁵.

Where a trustee has been appointed by the Secretary of State on such an application and an insolvency order⁶ is subsequently made against a further insolvent member⁷, the trustee so appointed must also be the trustee of the member against whom the subsequent order is made⁸.

Where the trustee of the members' estates and of the partnership has been appointed by the Secretary of State, whether under these provisions or otherwise, or has become trustee of a further insolvent member under these provisions, the trustee must give notice of his appointment or further appointment, as the case may be, to the creditors of the members and the creditors of the partnership or, if the court so allows, must advertise his appointment in accordance with the court's directions⁹. In that notice or advertisement the trustee must:

1719 (1) state whether he proposes to summon a combined general meeting of the creditors of the members and of the creditors of the partnership for the purpose of establishing a creditors' committee¹⁰; and

1720 (2) if he does not propose to summon such a meeting, set out the power of the creditors¹¹ to require him to summon one¹².

Where, in a case of the trustee becoming trustee of a further insolvent member¹³, a meeting referred to in head (1) above has already been held, the trustee must state in the notice or advertisement whether a creditors' committee was established at that meeting and, if such a committee was established, must state whether he proposes to appoint additional members of the committee¹⁴ and, if such a committee was not established, must set out the power of the creditors to require him to summon a meeting for the purpose of determining whether a creditors' committee should be established¹⁵.

1 le by virtue of any provision of the Insolvency Act 1986 Pt IX Ch III (ss 292-304) (as modified). As to the official receiver see para 503 et seq ante.

2 Ibid s 296(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 13. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to the Secretary of State see para 11 note 10 ante.

- 3 Insolvency Act 1986 s 296(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 13.
- 4 Ie under the Insolvency Act 1986 s 295 (as modified) (see para 1277 ante) or under s 300 (as modified) (see para 1282 post).
- 5 Ibid s 296(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 13.
- 6 For the meaning of 'insolvency order' see para 1191 note 1 ante.
- 7 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.
- 8 Insolvency Act 1986 s 296(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 13.
- 9 Insolvency Act 1986 s 296; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 13.
- 10 Ie under the Insolvency Act 1986 s 301 (as modified): see para 1283 post.
- 11 Ie under ibid Pt IX (ss 264-371) (as amended and modified): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 12 Ibid s 296(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 13.
- 13 Ie under the Insolvency Act 1986 s 296(4) (as modified): see the text to notes 6-8 supra.
- 14 Ie under ibid s 301A(3) (as added): see para 1283 post.
- 15 Ibid s 296; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 13.

UPDATE

1166-1301 Insolvent Partnerships

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1279. Rules applicable to meetings of creditors.

Where the court has made insolvency orders¹, the rules relating to the requisitioning, summoning, holding and conducting of meetings on the bankruptcy of an individual apply, with the necessary modifications, to the requisitioning, summoning, holding and conducting of separate meetings of the creditors of each member² and of combined meetings of the creditors of the partnership and the creditors of the members³; but any combined meeting of creditors must be conducted as if the creditors of the members and of the partnership were a single set of creditors⁴.

1 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.

2 For the meaning of 'member' see para 1171 note 2 ante.

3 Insolvency Act 1986 s 297; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 14. Certain provisions of the Insolvency Act 1986 relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

4 Insolvency Act 1986 s 297; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 14.

UPDATE

1166-1301 Insolvent Partnerships

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1280. Removal of trustee; vacation of office.

Subject as follows, the trustee of the estates of the members¹ and of the partnership may be removed from office only by an order of the court².

If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State³.

The trustee, not being the official receiver, must vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to any member or to the partnership⁴.

The trustee may, with the leave of the court, or, if appointed by the Secretary of State, with the leave of the court or the Secretary of State, resign his office by giving notice of his resignation to the court⁵.

Any removal from or vacation of office under these provisions relates to all offices held⁶ in the proceedings⁷.

The trustee must vacate office on giving notice to the court that a final meeting of creditors or members has been held⁸ and of the decision, if any, of that meeting⁹.

The trustee must vacate office as trustee of a member if the order made¹⁰ in relation to that member is annulled¹¹.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Insolvency Act 1986 s 298(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 15. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

3 Insolvency Act 1986 s 298(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15. As to the Secretary of State see para 11 note 10 ante.

4 Insolvency Act 1986 s 298(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15. As to the official receiver see para 503 et seq ante. As to insolvency practitioners and their qualification see para 8 et seq ante.

5 Insolvency Act 1986 s 298(7); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15.

6 Ie by virtue of ibid art 11: see para 1266 ante.

7 Insolvency Act 1986 s 298; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15. This provision is subject to the Insolvency Act 1986 s 298 (as modified) (see the text to notes 8-11 infra): s 298; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15.

8 Ie under the Insolvency Act 1986 s 331 (as modified): see para 1290 post.

9 Ibid s 298(8); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15.

10 See note 6 supra.

- 11 Insolvency Act 1986 s 298; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 15.

UPDATE

1166-1301 Insolvent Partnerships

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1281. Release of trustee.

Where the official receiver has ceased to be the trustee of the members¹ estates and of the partnership and a person is appointed in his stead, the official receiver has his release with effect from the following time:

- 1721 (1) where that person is appointed by a combined general meeting of creditors of the members and of the partnership or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced; and
- 1722 (2) where that person is appointed by the court, such time as the court may determine².

If the official receiver, while he is the trustee, gives notice to the Secretary of State that the administration of the estate of any member, or the winding up of the partnership business and administration of its affairs, is for practical purposes complete, he has his release as trustee of the member or as trustee of the partnership, as the case may be, with effect from such time as the Secretary of State may determine³.

A person other than the official receiver who has ceased to be the trustee of the estate of any member or of the partnership has his release with effect from the following time:

- 1723 (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
- 1724 (b) in the case of a person who has been removed from office by the court or by the Secretary of State, or who has vacated office by reason of ceasing to be a person qualified to act as an insolvency practitioner⁴, such time as the Secretary of State may, on an application by that person, determine;
- 1725 (c) in the case of a person who has resigned, such time as may be directed by the court, or, if he was appointed by the Secretary of State, such time as may be directed by the court or as the Secretary of State may, on an application by that person, determine;
- 1726 (d) in the case of a person who has vacated office or given notice that a final meeting of creditors or members has been held⁵, if the final meeting has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine and, if that meeting has not so resolved, the time at which the person vacated office⁶.

Where an insolvency order⁷ is annulled in so far as it relates to any member, the trustee at the time of the annulment has his release in respect of that member with effect from such time as the court may determine⁸.

Where the trustee, including the official receiver when so acting, has his release under these provisions, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the administration of the estates of the members and in the winding up of the partnership business and administration of its affairs and otherwise in relation to his conduct as trustee; but nothing in these provisions prevents the exercise, in

relation to a person who has had his release, of the court's powers⁹ to impose liability on the trustee for misapplication of property comprised in the bankrupt's estate or misfeasance¹⁰.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Insolvency Act 1986 s 299(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 16. Certain provisions of the Insolvency Act 1986 relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to the Secretary of State see para 11 note 10 ante. As to the official receiver see para 503 et seq ante.

3 Insolvency Act 1986 s 299(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 16.

4 *Ie* under the Insolvency Act 1986 s 298(6) (as modified): see para 1280 ante.

5 *Ie* under *ibid* s 298(8) (as modified): see para 1280 ante.

6 *Ibid* s 299(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 16.

7 *Ie* by virtue of *ibid* art 11: see para 1266 ante.

8 Insolvency Act 1986 s 299(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 16.

9 *Ie* under the Insolvency Act 1986 s 304: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 346-347.

10 *Ibid* s 299(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 16.

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1282. Vacancy in office of trustee.

Where the appointment of any person as trustee of the members¹ estates and of the partnership fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee, the provisions described below apply².

The official receiver may refer the need for an appointment to the Secretary of State and is trustee until the vacancy is filled³. On such a reference to the Secretary of State, the Secretary of State must either make an appointment or decline to make one⁴. If on such a reference no appointment is made, the official receiver continues to be trustee, but without prejudice to his power to make a further reference⁵.

References in these provisions to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a member's estate, to revive the trusteeship of that estate after the holding of a final meeting⁶ or the giving by the official receiver of notice⁷ that the administration of the estate of any member, or the winding up of the partnership business, is for practical purposes complete⁸.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Insolvency Act 1986 s 300(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 17. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

3 Insolvency Act 1986 s 300(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 17. As to the Secretary of State see para 11 note 10 ante.

4 Insolvency Act 1986 s 300(6); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 17.

5 Insolvency Act 1986 s 300(7); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 17.

6 He summoned under the Insolvency Act 1986 s 331 (as modified): see para 1290 post.

7 He under *ibid* s 299(2) (as modified): see para 1281 ante.

8 *Ibid* s 300(8); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 17.

UPDATE

1166-1301 Insolvent Partnerships

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1283. Creditors' committee; functions and membership.

Subject as follows, a combined general meeting of the creditors of the members and of the partnership¹ may establish a committee (known as 'the creditors' committee') to exercise the functions conferred on it by or under the Insolvency Act 1986².

A combined general meeting of the creditors of the members and of the partnership may not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver³.

The committee established under these provisions must act as creditors' committee for each member and as liquidation committee for the partnership, and must, as appropriate, exercise the functions conferred on creditors' and liquidation committees in a bankruptcy or winding up by or under the Insolvency Act 1986⁴.

The rules relating to liquidation committees apply, with the necessary modifications and with the exclusion of all references to contributories, to a committee established under these provisions⁵.

Where the appointment of the trustee also takes effect in relation to a further insolvent member⁶, the trustee may appoint any creditor of that member, being qualified under the rules to be a member of the committee, to be an additional member of any creditors' committee already established under the above provisions, provided that the creditor concerned consents to act⁷.

The court may at any time, on application by a creditor of any member or of the partnership, appoint additional members of the creditors' committee⁸.

If additional members of the creditors' committee are so appointed by the trustee or the court, the limit on the maximum number of members of the committee specified in the rules is increased by the number of additional members so appointed⁹.

¹ ie whether summoned under the Insolvency Act 1986 ss 292-300 (as modified) (see para 1275 et seq ante) or otherwise.

² Ibid s 301(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 18. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

³ Insolvency Act 1986 s 301(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 18.

⁴ Insolvency Act 1986 s 301A(1) (s 301A added by the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 18).

⁵ Insolvency Act 1986 s 301A(2) (as added: see note 4 supra). As to the rules relating to liquidation committees see the Insolvency Rules 1986, SI 1986/1925 (as amended); and para 995 et seq ante. As to liquidation committees see para 994 et seq ante.

- 6 le under ibid s 293 (as modified) (see para 1276 ante) or s 296(4) (as modified) (see para 1278 ante).
- 7 Ibid s 301A(3) (as added: see note 4 supra).
- 8 Ibid s 301A(4) (as added: see note 4 supra).
- 9 Ibid s 301A(5) (as added: see note 4 supra).

UPDATE

1166-1301 Insolvent Partnerships

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Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1284. General functions and powers of trustee.

1284. General functions and powers of trustee.

The function of the trustee of the estates of the members and of the partnership¹ is to get in, realise and distribute² the estates of the members and the partnership property³.

The trustee has all the functions and powers in relation to the partnership and the partnership property that he has in relation to the members and their estates⁴.

In the carrying out of his functions and in the management of the members' estates and the partnership property, the trustee is entitled⁵ to use his own discretion⁶.

It is the duty of the trustee, if he is not the official receiver:

- 1727 (1) to furnish the official receiver with information;
- 1728 (2) to produce to the official receiver, and permit inspection by the official receiver of, books, papers and other records; and
- 1729 (3) to give the official receiver other assistance,

such as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy of the members and the winding up of the partnership business and administration of its property⁷.

1 As to the official name of the trustee in his capacity as trustee of a member, and as trustee of the partnership, see the Insolvency Act 1986 s 305(4); and the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 19. For the meaning of 'member' see para 1171 note 2 ante.

2 In accordance with the provisions of the Insolvency Act 1986 Pt IX Ch IV (ss 305-335) (as modified).

3 Ibid s 305(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 19. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. For the meaning of 'partnership property' see para 1179 note 4 ante.

4 Insolvency Act 1986 s 305; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 19.

5 In subject to the provisions of the Insolvency Act 1986 Pt IX Ch IV (as modified).

6 Ibid s 305; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 19.

7 Insolvency Act 1986 s 305(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 19.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1285. Obligation to surrender control to trustee.

1285. Obligation to surrender control to trustee.

Where insolvency orders are made¹ and a trustee is appointed, any person who is or has been an officer² of the partnership in question, or who is an executor or administrator of the estate of a deceased officer of the partnership, must deliver up to the trustee of the partnership, for the purposes of the exercise of the trustee's functions under the Insolvency Act 1986, possession of any partnership property³ which he holds for the purposes of the partnership⁴.

Each member must deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession⁵.

If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely:

- 1730 (1) the official receiver;
- 1731 (2) a person who has ceased to be trustee of a member's estate;
- 1732 (3) a person who has been the administrator of the partnership or supervisor of a voluntary arrangement approved in relation to the partnership⁶;
- 1733 (4) a person who has been the supervisor of a voluntary arrangement approved in relation to a member⁷,

the official receiver or, as the case may be, that person must deliver up possession of the property, books, papers or records to the trustee⁸.

Any banker or agent of a member or of the partnership, or any other person who holds any property to the account of, or for, a member or the partnership must pay or deliver to the trustee all property in his possession or under his control which forms part of the member's estate or which is partnership property and which he is not by law entitled to retain as against the member, the partnership or the trustee⁹.

If any person without reasonable excuse fails to comply with any obligation imposed by these provisions, he is guilty of a contempt of court and liable to be punished accordingly, in addition to any other punishment to which he may be subject¹⁰.

1 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.

2 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

3 For the meaning of 'partnership property' see para 1179 note 4 ante.

4 Insolvency Act 1986 s 312; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 20. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

5 Insolvency Act 1986 s 312; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 20. This is without prejudice to the general duties of the members as bankrupts under the Insolvency Act 1986 s 333 (see

BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 345, 447): s 312; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 20.

6 Ie under ibid Pt I (ss 1-7B) (as amended and modified): see para 1169 et seq ante.

7 Ie under ibid Pt VIII (ss 252-263) (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 83 et seq.

8 Ibid s 312(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 20.

9 Insolvency Act 1986 s 312(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 20.

10 Insolvency Act 1986 s 312(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 20.

UPDATE

1166-1301 Insolvent Partnerships

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1286. Priority of expenses.

The provisions described below apply¹ as regards priority of expenses incurred by a person acting as trustee of the estates of the members² of an insolvent partnership and as trustee of that partnership³.

The joint estate⁴ of the partnership is applicable in the first instance in payment of the joint expenses⁵, and the separate estate⁶ of each insolvent member⁷ is applicable in the first instance in payment of the separate expenses⁸ relating to that member⁹.

Where the joint estate is insufficient for the payment in full of the joint expenses, the unpaid balance must be apportioned equally between the separate estates of the insolvent members against whom insolvency orders¹⁰ have been made, and forms part of the expenses to be paid out of those estates¹¹.

Where any separate estate of an insolvent member is insufficient for the payment in full of the separate expenses to be paid out of that estate, the unpaid balance forms part of the expenses to be paid out of the joint estate¹².

Where, after the transfer of any unpaid balance in accordance with these provisions, any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid must be apportioned equally between the other estates¹³.

Where, after such an apportionment, one or more estates are insufficient for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates must continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between all the estates¹⁴.

Without prejudice to the provisions described above, the trustee may, with the sanction of any creditors' committee¹⁵ or with the leave of the court obtained on application, pay out of the joint estate as part of the expenses to be paid out of that estate any expenses incurred for any separate estate of an insolvent member or pay out of any separate estate of an insolvent member any part of the expenses incurred for the joint estate which affects that separate estate¹⁶.

¹ In a case where the Insolvent Partnerships Order 1994, SI 1994/2421, art 11 applies: see para 1266 ante.

² For the meaning of 'member' see para 1171 note 2 ante.

³ Insolvency Act 1986 s 328; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 21. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

⁴ For the meaning of 'joint estate' see para 1242 note 6 ante.

- 5 For the meaning of 'joint expenses' see para 1242 note 7 ante.
- 6 For the meaning of 'separate estate' see para 1242 note 8 ante.
- 7 For the meaning of 'insolvent member' see para 1191 note 2 ante.
- 8 For the meaning of 'separate expenses' see para 1242 note 9 ante.
- 9 Insolvency Act 1986 s 328; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 21.
- 10 For the meaning of 'insolvency order' see para 1191 note 1 ante.
- 11 Insolvency Act 1986 s 328; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 21.
- 12 Insolvency Act 1986 s 328; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 21.
- 13 Insolvency Act 1986 s 328; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 21.
- 14 Insolvency Act 1986 s 328; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 21.
- 15 le established under the Insolvency Act 1986 s 301 (as modified): see para 1283 ante.
- 16 Ibid s 328; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 21.

UPDATE

1166-1301 Insolvent Partnerships

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1287. Priority of debts in joint estate and in separate estate.

The provisions¹ described below apply as regards priority of debts².

After payment of expenses³, the joint debts⁴ of the partnership must be paid out of its joint estate⁵ in the following order of priority:

- 1734 (1) the preferential debts⁶;
- 1735 (2) the debts which are neither preferential debts nor postponed debts⁷;
- 1736 (3) interest⁸ on the joint debts, other than postponed debts;
- 1737 (4) the postponed debts;
- 1738 (5) interest⁸ on the postponed debts⁹.

The responsible insolvency practitioner¹⁰ must adjust the rights among themselves of the members of the partnership as contributories and must distribute any surplus to the members or, where applicable, to the separate estates¹¹ of the members, according to their respective rights and interests in it¹².

The debts referred to in each of heads (1) and (2) above rank equally between themselves, and in each case, if the joint estate is insufficient for meeting them, they abate in equal proportions between themselves¹³.

Where the joint estate is not sufficient for the payment of the joint debts in accordance with heads (1) and (2) above, the responsible insolvency practitioner must aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order¹⁴ has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the debts¹⁵ of the members¹⁶.

Where the joint estate is sufficient for the payment of the joint debts in accordance with heads (1) and (2) above but not for the payment of interest under head (3) above, the responsible insolvency practitioner must aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the interest on the separate debts¹⁷.

Where the joint estate is not sufficient for the payment of the postponed joint debts in accordance with head (4) above, the responsible insolvency practitioner must aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the postponed debts¹⁸ of the member¹⁹.

Where the joint estate is sufficient for the payment of the postponed joint debts in accordance with head (4) above, but not for the payment of interest under head (5) above, the responsible

insolvency practitioner must aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount is a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which is a debt provable by the responsible insolvency practitioner in each such estate, and ranks equally with the interest²⁰ on the postponed debts²¹.

Where the responsible insolvency practitioner receives any distribution from the separate estate of a member in respect of a debt provable under these provisions²², that distribution becomes part of the joint estate and must be distributed in accordance with the order of priority set out above²³.

The separate estate of each member of the partnership against whom an insolvency order has been made is applicable, after payment of expenses²⁴, in payment of the separate debts of that member in the following order of priority:

- 1739 (a) the preferential debts;
- 1740 (b) the debts which are neither preferential debts nor postponed debts²⁵;
- 1741 (c) interest²⁶ on the separate debts²⁷;
- 1742 (d) the postponed debts of the member²⁸;
- 1743 (e) interest²⁹ on the postponed debts of the member³⁰.

The debts referred to in heads (a) and (b) above rank equally between themselves, and in each case, if the separate estate is insufficient for meeting them, they abate in equal proportions between themselves³¹.

Where the responsible insolvency practitioner receives any distribution from the joint estate or from the separate estate of another member of the partnership against whom an insolvency order has been made, that distribution becomes part of the separate estate and must be distributed in accordance with the order of priority set out above³².

These provisions are without prejudice to any provision of the Insolvency Act 1986 or of any other enactment concerning the ranking between themselves of postponed debts and interest thereon, but in the absence of any such provision postponed debts and interest thereon rank equally between themselves³³.

1 le in a case where the Insolvent Partnerships Order 1994, SI 1994/2421, art 11 applies: see para 1266 ante.

2 Insolvency Act 1986 s 328A(1) (ss 328A, 328B, 328C added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 21). Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

3 le in accordance with the Insolvency Act 1986 s 328 (as modified) (see para 1286 ante) and subject to s 328C(2) (as added) (see para 1288 post).

4 For the meaning of 'joint debt' see para 1210 note 11 ante.

5 For the meaning of 'joint estate' see para 1242 note 6 ante.

6 For the meaning of 'preferential debt' see para 763 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 577.

7 For the meaning of 'postponed debt' see para 1243 note 7 ante.

8 le under the Insolvency Act 1986 s 328D (as added): see para 1289 post.

- 9 Ibid s 328A(2) (as added: see note 2 supra).
- 10 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.
- 11 For the meaning of 'separate estate' see para 1242 note 8 ante.
- 12 Insolvency Act 1986 s 328A(3) (as added: see note 2 supra).
- 13 Ibid s 328A(4) (as added: see note 2 supra).
- 14 For the meaning of 'insolvency order' see para 1191 note 1 ante.
- 15 Ie the debts of the member referred to in the Insolvency Act 1986 s 328B(1)(b) (as added): see head (b) in the text.
- 16 Ibid s 328A(5) (as added: see note 2 supra). For the purpose of establishing the value of any debt so provable by the responsible insolvency practitioner, that value may be estimated by the responsible insolvency practitioner in accordance with s 322 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 493): s 328C(3) (as added: see note 2 supra).
- 17 Ibid s 328A(6) (as added: see note 2 supra). The interest on the separate debts is that referred to in s 328B(1)(c) (as added) (see head (c) in the text): s 328A(6) (as so added). For the meaning of 'separate debt' see para 1217 note 4 ante.
- 18 Ie the postponed debts of the member referred to in ibid s 328B(1)(d) (as added): see head (d) in the text.
- 19 Ibid s 328A(7) (as added: see note 2 supra). For the purpose of establishing the value of any debt provable by the responsible insolvency practitioner, that value may be estimated by the responsible insolvency practitioner in accordance with the Insolvency Act 1986 s 322: s 328C(3) (as added: see note 2 supra).
- 20 Ie the interest referred to in ibid s 328B(1)(e) (as added): see head (e) in the text.
- 21 Ibid s 328A(8) (as added: see note 2 supra).
- 22 Ie under the Insolvency Act 1986 s 328A(5), (6), (7) or (8) (as added): see the text to notes 14-21 supra.
- 23 Ibid s 328A(9) (as added: see note 2 supra). The order of priority is that set out in s 328A(2) (as added) (see heads (1)-(5) in the text): s 328A(9) (as so added).
- 24 See note 3 supra.
- 25 Ie including any debt made provable under the Insolvency Act 1986 s 328A(5) (as added): see the text to notes 14-16 supra.
- 26 See note 8 supra.
- 27 Ie and interest under the Insolvency Act 1986 s 328A(6) (as added): see the text to note 17 supra.
- 28 Ie including any debt made provable under ibid s 328A(7) (as added): see the text to notes 18-19 supra.
- 29 See note 8 supra.
- 30 Insolvency Act 1986 s 328B(1) (as added: see note 2 supra). Interest under s 328B(1)(e) (see head (e) in the text) includes interest under s 328A(8) (as added) (see the text to notes 20-21 supra): s 328B(1) (as so added). The provisions contained in s 328B (as added) are subject to the provisions of the Partnership Act 1890 s 9 (see PARTNERSHIP vol 79 (2008) PARA 74) as respects the liability of the estate of a deceased member: Insolvency Act 1986 s 328A(1) (as added: see note 2 supra).
- 31 Ibid s 328B(2) (as added: see note 2 supra). See also note 30 supra.
- 32 Ibid s 328B(3) (as added: see note 2 supra). See also note 30 supra. The order of priority is that set out in the Insolvency Act 1986 s 328B(1) (as added) (see heads (a)-(e) in the text): s 328B(3) (as so added).
- 33 Ibid s 328C(5) (as added: see note 2 supra).

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1288. Provisions generally applicable in distribution of joint and separate estates.

Distinct accounts must be kept of the joint estate¹ of the partnership and of the separate estate² of each member³ of that partnership against whom an insolvency order⁴ is made⁵.

No member of the partnership may prove for a joint or separate debt in competition with the joint creditors, unless the debt has arisen as a result of fraud or in the ordinary course of a business carried on separately from the partnership business⁶.

Interest⁷ on preferential debts ranks equally with interest on debts which are neither preferential debts nor postponed debts⁸.

If any two or more members of an insolvent partnership constitute a separate partnership, the creditors of such separate partnership are deemed to be a separate set of creditors and subject to the same statutory provisions as the separate creditors of any member of the insolvent partnership⁹.

Where any surplus remains after the administration of the estate of a separate partnership, the surplus must be distributed to the members or, where applicable, to the separate estates of the members of that partnership according to their respective rights and interests in it¹⁰.

Neither the official receiver, the Secretary of State nor a responsible insolvency practitioner¹¹ is entitled to remuneration or fees¹² for his services in connection with the transfer of a surplus from the joint estate to a separate estate¹³, a distribution from a separate estate to the joint estate in respect of certain claims¹⁴ or a distribution from the surplus in the estate of a separate partnership¹⁵ to the separate estates of the members of that partnership¹⁶.

1 For the meaning of 'joint estate' see para 1242 note 6 ante.

2 For the meaning of 'separate estate' see para 1242 note 8 ante.

3 For the meaning of 'member' see para 1171 note 2 ante.

4 For the meaning of 'insolvency order' see para 1191 note 1 ante.

5 Insolvency Act 1986 s 328C(1) (s 328C added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 21). Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

6 Insolvency Act 1986 s 328C(2) (as added: see note 5 supra).

7 Ie under the Insolvency Act 1986 s 328D (as added): see para 1289 post.

8 Ibid s 328C(4) (as added: see note 5 supra).

9 Ibid s 328C(6) (as added: see note 5 supra).

10 Ibid s 328C(7) (as added: see note 5 supra).

11 For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante. As to the official receiver see para 503 et seq ante. As to the Secretary of State see para 11 note 10 ante.

12 Ie under the Insolvency Rules 1986, SI 1986/1925 (as amended), the Insolvency Regulations 1994, SI 1994/2507 (as amended) or the Insolvency Proceedings (Fees) Order 2004, SI 2004/593 (replacing the Insolvency Fees Order 1986, SI 1986/2030 (revoked)). As to the Secretary of State see para 11 note 10 ante.

13 Ie under the Insolvency Act 1986 s 328A(3) (as added): see para 1287 ante.

14 Ie the claims referred to in ibid s 328A(5), (6), (7) or (8) (as added): see para 1287 ante.

15 Ie under ibid s 328C(7) (as added): see the text to note 10 supra.

16 Ibid s 328C(8) (as added: see note 5 supra); Interpretation Act 1978 s 17(2)(a).

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1288 Provisions generally applicable in distribution of joint and separate estates

NOTE 12--SI 2004/593 amended: SI 2005/544, SI 2006/561, SI 2007/521, SI 2008/714, SI 2009/645.

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1289. Interest on debts.

In the bankruptcy of each of the members¹ of an insolvent partnership and in the winding up of that partnership's business and administration of its property, interest is payable in accordance with the provisions described below and in the prescribed order of priority² on any debt proved in the bankruptcy including so much of any such debt as represents interest on the remainder³.

Interest is payable on the debts in question in respect of the periods during which they have been outstanding since the relevant order⁴ was made⁵. The rate of interest payable in respect of any debt⁶ is whichever is the greater of the rate payable on judgment debts⁷ on the day on which the relevant order was made, and the rate applicable to that debt apart from the bankruptcy or winding up⁸.

1 For the meaning of 'member' see para 1171 note 2 ante.

2 Ie the order of priority laid down in the Insolvency Act 1986 ss 328A, 328B (as added): see para 1287 ante.

3 Ibid s 328D(1) (s 328D added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 21). Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

4 Ie by virtue of ibid art 11: see para 1266 ante.

5 Insolvency Act 1986 s 328D(2) (as added: see note 3 supra).

6 The rate of interest so payable is defined as 'the official rate' for the purposes of any provision of the Insolvency Act 1986 in which that expression is used: s 328D(3) (as added: see note 3 supra).

7 Ie the rate specified in the Judgments Act 1838 s 17 (as amended). The rate so specified is 8% per annum: s 17(1) (amended by the Civil Procedure Acts Repeal Act 1879 s 2, Schedule Pt I; the Statute Law Revision (No 2) Act 1888; the Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, art 2; and by the Civil Procedure (Modification of Enactments) Order 1998, SI 1998/2940, art 3(a), (b)).

8 Insolvency Act 1986 s 328D(3) (as added: see note 3 supra).

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1290. Final meeting.

The provisions described below apply¹ where:

- 1744 (1) it appears to the trustee of the estates of the members² and of the partnership that the administration of any member's estate or the winding up of the partnership business and administration of the partnership property³ is for practical purposes complete; and
- 1745 (2) the trustee is not the official receiver⁴.

The trustee must summon a final general meeting of the creditors of any such member or of the partnership, as the case may be, or a combined final general meeting of the creditors of any such members or, as the case may be, the creditors of any such members and of the partnership which:

- 1746 (a) must as appropriate receive the trustee's report of the administration of the estate of the member or members or of the winding up of the partnership business and administration of the partnership property; and
- 1747 (b) must determine whether the trustee should have his release⁵ in respect, as the case may be, of the administration of the estate of the member or members, or of the winding up of the partnership business and administration of the partnership property⁶.

The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of a final distribution⁷; but, if summoned for an earlier date, that meeting must be adjourned, and, if necessary, further adjourned, until a date on which the trustee is able to report that the administration of the estate of the member or members or the winding up of the partnership business and administration of the partnership property is for practical purposes complete⁸.

In the administration of the members' estates and the winding up of the partnership business and administration of the partnership property, it is the trustee's duty to retain sufficient sums from the property of the members and of the partnership to cover the expenses of summoning and holding any meeting required by these provisions⁹.

¹ ie subject to the Insolvency Act 1986 s 331(2)-(4) (as modified) (see the text to notes 4-9 infra) and s 332 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 606).

² For the meaning of 'member' see para 1171 note 2 ante.

³ For the meaning of 'partnership property' see para 1179 note 4 ante.

⁴ Insolvency Act 1986 s 331(1); Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 22. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out

as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante. As to the official receiver see para 503 et seq ante.

5 le under the Insolvency Act 1986 s 299 (as modified): see para 1281 ante.

6 Ibid s 331(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 22.

7 le under the Insolvency Act 1986 s 330(1): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 605.

8 Ibid s 331(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 22.

9 Insolvency Act 1986 s 331(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 para 22.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1290 Final meeting

TEXT AND NOTES--See SI 1986/1925 r 6.78D (distribution of property in specie) (added by SI 2010/686).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(5) MEMBERS' PETITIONS/(iii) Insolvency Proceedings not involving Winding Up of Insolvent Partnership as Unregistered Company where Individual Members Present Joint Bankruptcy Petition/1291. Preferential debts; meaning of 'the relevant date'.

1291. Preferential debts; meaning of 'the relevant date'.

Where an order has been made in respect of an insolvent partnership¹, references² to the relevant date, being the date which determines the existence and amount of a preferential debt, are references to the date on which such order was made³.

1 Ie by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.

2 Ie references in the Insolvency Act 1986 s 386, Sch 6 (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 577 et seq.

3 Ibid s 387; Insolvent Partnerships Order 1994, SI 1994/2421, art 11(3), Sch 7 para 23. Certain provisions of the Insolvency Act 1986, relating to the insolvency of individuals where a bankruptcy petition is presented by a debtor, apply in relation to the bankruptcy of the individual members of an insolvent partnership, without the partnership being wound up as an unregistered company. Certain of those provisions are modified in their application in relation to the individual members of insolvent partnerships, and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 7 (as amended): see para 1267 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(6) MISCELLANEOUS PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS/1292. Winding up of unregistered company which is a member of insolvent partnership being wound up.

(6) MISCELLANEOUS PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS

1292. Winding up of unregistered company which is a member of insolvent partnership being wound up.

Where an insolvent partnership or other body which may be wound up as an unregistered company¹ is itself a member of an insolvent partnership being so wound up, the provisions of the Insolvent Partnerships Order 1994² relating to:

- 1748 (1) the winding up of an insolvent partnership as an unregistered company on a creditor's petition where concurrent petitions are presented against one or more members³; and
- 1749 (2) the winding up of an insolvent partnership as an unregistered company on a member's petition where concurrent petitions are presented against all members⁴,

apply in relation to the latter insolvent partnership as though the former body were a corporate member⁵ of that partnership⁶.

1 Ie under the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

2 Ie the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended).

3 Ie ibid art 8 (as amended): see para 1218 et seq ante.

4 Ie ibid art 10: see para 1260 et seq ante.

5 For the meaning of 'corporate member' see para 1191 note 1 ante.

6 Insolvent Partnerships Order 1994, SI 1994/2421, art 12.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(6) MISCELLANEOUS PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS/1293. Deposit on petitions.

1293. Deposit on petitions.

Where an order¹ provides for any sum to be deposited on presentation of a winding-up or bankruptcy petition, that sum, in the case of petitions presented by virtue of the provisions relating to the presentation of concurrent petitions against an insolvent partnership and its members², is only required to be deposited in respect of the petition for winding up the partnership, but is to be treated as a deposit in respect of all those petitions³.

Production of evidence as to the sum deposited on presentation of the petition for winding up the partnership suffices for the filing in court of an insolvency petition against an insolvent member⁴.

1 Ie under the Insolvency Act 1986 s 414(4) (see para 1106 ante) or s 415(3) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 816).

2 Ie the Insolvent Partnerships Order 1994, SI 1994/2421, art 8 (as amended) (see para 1218 ante) and art 10 (see para 1260 ante).

3 Ibid art 13(1).

4 Ibid art 13(2). For the meaning of 'insolvent member' see para 1191 note 2 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(6) MISCELLANEOUS PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS/1294. Supplemental powers of court.

1294. Supplemental powers of court.

There are additional supplementary powers¹, in the case of insolvent partnerships².

Where at any time after a winding-up petition has been presented to the court against any person, including an insolvent partnership or other body which may be wound up³ as an unregistered company, whether by virtue of the provisions of the Insolvent Partnerships Order 1994⁴ or not, the attention of the court is drawn to the fact that the person in question is a member⁵ of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings⁶ and any such order may apply any provisions of the Insolvent Partnerships Order with any necessary modifications⁷. Any such order or directions may be made or given on the application of the official receiver, any responsible insolvency practitioner⁸, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate⁹ of the partnership, and in particular how it and the separate estate¹⁰ of any member are to be administered¹¹.

Where the court makes an order for the winding-up of an insolvent partnership on the grounds that it is unable to pay its debts under the Financial Services Act 1986¹², the Banking Act 1987¹³, or the Financial Services and Markets Act 2000¹⁴, the court may make an order as to the future conduct of the winding-up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications¹⁵.

In the case of members of insolvent partnerships, there are additional powers relating to the general control of a trustee by the court¹⁶.

Where at any time after a bankruptcy petition has been presented to the court against any person, whether under the provisions of the Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications¹⁷. Where a bankruptcy petition has been presented against more than one individual in the circumstances described above, the court may give such directions for consolidating the proceedings, or any of them, as it thinks just¹⁸. Any order or directions under these provisions¹⁹ may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person; and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered²⁰.

1 As to the supplementary powers see the Insolvency Act 1986 s 168 (as amended); and para 572 ante.

2 Insolvent Partnerships Order 1994, SI 1994/2421, art 14.

3 ie under the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see para 1147 et seq ante.

4 ie the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended): see para 1166 et seq ante.

5 For the meaning of 'member' see para 1171 note 2 ante.

6 For the meaning of 'insolvency proceedings' see para 1166 note 18 ante.

7 Insolvency Act 1986 s 168(5A) (s 168(5A), (5B), (5C) added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 14(1)).

8 As to the official receiver see para 503 et seq ante. For the meaning of 'responsible insolvency practitioner' see para 1204 note 4 ante.

9 For the meaning of 'joint estate' see para 1242 note 6 ante.

10 For the meaning of 'separate estate' see para 1242 note 8 ante.

11 Insolvency Act 1986 s 168(5B) (as added: see note 7 supra).

12 Ie under the Financial Services Act 1986 s 72(1)(a) (repealed). The Financial Services Act 1986 was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

13 Ie under the Banking Act 1987 s 92(1)(a) (repealed). The Banking Act 1987 was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

14 Ie under the Financial Services and Markets Act 2000 s 367(3)(a): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 497.

15 Insolvency Act 1986 s 168(5C) (as added (see note 7 supra); and substituted by the Financial Services and Markets Act (Consequential Amendments) Order 2002, SI 2002/1555, art 15). The Insolvency Act 1986 s 168(5C) (as added) was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, SI 2001/3649, art 306 as from 1 December 2001, but was subsequently substituted by the Financial Services and Markets Act (Consequential Amendments) Order 2002, SI 2002/1555, art 15, which provided that the repeal is to be treated as if it had not been made.

16 Ie the Insolvency Act 1986 s 303 (as amended): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 344.

17 Ibid s 303(2A) (s 303(2A), (2B), (2C) added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 14(2)).

18 Insolvency Act 1986 s 303(2B) (as added: see note 17 supra). Bankruptcy proceedings may be consolidated by virtue of the Insolvent Partnerships Order 1994, SI 1994/2421, art 14 irrespective of whether they were commenced under the Bankruptcy Act 1914 or the Insolvency Act 1986 or by virtue of the Insolvent Partnerships Order 1986, SI 1986/2142 (revoked) or the Insolvent Partnerships Order 1994, SI 1994/2421, and the court must, in the case of proceedings commenced under or by virtue of different enactments, make provision for the manner in which the consolidated proceedings are to be conducted: art 19(6).

19 Ie under the Insolvency Act 1986 s 303(2A) (as added) or s 303(2B) (as added): see the text to notes 17-18 supra.

20 Ibid s 303(2C) (as added: see note 17 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1294 Supplemental powers of court

TEXT AND NOTES 17-20--A precondition for the exercise of the power conferred by the 1986 Act s 303(2A)-(2C) is that the partnership in question is insolvent: *Official Receiver v Hollens* [2007] EWHC 753 (Ch), [2007] Bus LR 1402.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(6) MISCELLANEOUS PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS/1295. Meaning of 'act as insolvency practitioner'.

1295. Meaning of 'act as insolvency practitioner'.

A person acts as an insolvency practitioner¹ in relation to an insolvent partnership by acting:

- 1750 (1) as its liquidator, provisional liquidator or administrator; or
- 1751 (2) as trustee of the partnership²; or
- 1752 (3) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved³, as nominee or supervisor⁴.

1 As to insolvency practitioners and their qualification see para 8 et seq ante.

2 Ie under the Insolvent Partnerships Order 1994, SI 1994/2421, art 11: see para 1266 ante.

3 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended and modified): see para 1169 et seq ante.

4 Ibid s 388(2A) (added by the Insolvent Partnerships Order 1994, SI 1994/2421, art 15(1); and amended by the Insolvent Partnerships (Amendment) (No 2) Order 2002, SI 2002/2708, art 3). Nothing in these provisions applies to anything done, whether in the United Kingdom or elsewhere, in relation to insolvency proceedings in a member state other than the United Kingdom: Insolvency Act 1986 s 388(6) (added by the Insolvency Act 1986 (Amendment) (No 2) Regulations 2002, SI 2002/1240, regs 3, 17). For the meaning of 'United Kingdom' see para 12 note 2 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(6) MISCELLANEOUS PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS/1296. Forms.

1296. Forms.

The prescribed forms¹ must be used in and in connection with proceedings by virtue of the Insolvent Partnerships Order 1994, whether in the High Court or a county court². The forms must be used with such variations, if any, as the circumstances may require³.

1 Ie the forms contained in the Insolvent Partnerships Order 1994, SI 1994/2421, art 17(1), Sch 9 (as amended).

2 Ibid art 17(1).

3 Ibid art 17(2).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1296 Forms

NOTE 1--SI 1994/2421 Sch 9 amended: SI 2005/1516, SI 2006/622.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(7) DISQUALIFICATION/1297. Application of the Company Directors Disqualification Act 1986.

(7) DISQUALIFICATION

1297. Application of the Company Directors Disqualification Act 1986.

Where an insolvent partnership is wound up as an unregistered company¹, certain provisions of the Company Directors Disqualification Act 1986 apply², certain of those provisions applying with modifications³.

¹ le under the Insolvency Act 1986 Pt V (ss 220-229) (as amended).

² The provisions of the Company Directors Disqualification Act 1986 (as amended) which so apply are s 1 (as amended), s 1A (as added and amended), ss 6-8 (as amended), s 8A (as added and amended), ss 9, 13-15 (as amended), s 17 (as substituted and amended), s 19(c), s 20 (as amended) and Sch 1 (as amended): see para 1107 et seq ante.

³ Insolvent Partnerships Order 1994, SI 1994/2421, art 16 (amended by SI 2001/767). The provisions of the Company Directors Disqualification Act 1986 cited in note 2 supra which are so modified are ss 6-8 (as amended), s 8A (as added and amended), ss 9, 13-15 (as amended), s 17 (as substituted and amended) and Sch 1 (as amended) (see para 1298-1300 post): Insolvent Partnerships Order 1994, SI 1994/2421, art 16 (as so amended).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(7) DISQUALIFICATION/1298. Duty of court to disqualify unfit officers of insolvent partnerships; application to court; disqualification undertakings; reporting provisions.

1298. Duty of court to disqualify unfit officers of insolvent partnerships; application to court; disqualification undertakings; reporting provisions.

The court¹ must make a disqualification order against a person in any case where, on an application under these provisions, it is satisfied:

- 1753 (1) that he is or has been an officer of a partnership which has at any time become insolvent², whether while he was an officer or subsequently; and
- 1754 (2) that his conduct as an officer of that partnership, either taken alone or taken together with his conduct as an officer of any other partnership or partnerships, or as a director³ of any company or companies, makes him unfit to be concerned in the management of a company⁴.

For these purposes, references to a person's conduct as an officer of any partnership or partnerships, or as a director of any company or companies, include, where the partnership or company concerned or any of the partnerships or companies concerned has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that partnership or company⁵.

Under these provisions the minimum period of disqualification is two years, and the maximum period is 15 years⁶.

If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under these provisions should be made against any person, an application for the making of such an order against that person may be made by the Secretary of State, or, if the Secretary of State so directs in the case of a person who is or has been an officer of a partnership which is being or has been wound up by the court as an unregistered company, by the official receiver⁷.

Except with the leave of the court, an application for the making of a disqualification order against any person may not be made after the end of the period of two years beginning with the day on which the partnership of which that person is or has been an officer became insolvent⁸.

If it appears to the Secretary of State that the conditions for the making of a disqualification order are satisfied⁹ as respects any person who has offered to give him a disqualification undertaking¹⁰, he may accept the undertaking if it appears to him that it is expedient in the public interest that he should accept the undertaking, instead of applying, or proceeding with an application, for a disqualification order¹¹.

If it appears to the responsible office-holder, that is to say in the case of a partnership which is being wound up by the court as an unregistered company, the official receiver, or in the case of a partnership in relation to which an administration order is in force, the administrator, that the conditions for the making of a disqualification order are satisfied as respects a person who is or has been an officer of that partnership, the office-holder must forthwith report the matter to the Secretary of State¹².

The Secretary of State or the official receiver may require the liquidator or administrator, or former liquidator or administrator of the partnership, or the liquidator, administrator or

administrative receiver, or former liquidator, administrator or administrative receiver, of the company:

- 1755 (a) to furnish him with such information with respect to any person's conduct as an officer of a partnership or as a director of a company; and
- 1756 (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such an officer or director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under the provisions described above¹³.

1 For these purposes, 'the court' means: (1) where the partnership in question is being or has been wound up as an unregistered company by the court, that court; (2) where head (1) supra does not apply but an administration order has at any time been made in relation to the partnership in question, any court which has jurisdiction to wind it up: Company Directors Disqualification Act 1986 s 6(3); Insolvent Partnerships Order 1994, SI 1994/2421, art 16, Sch 8 para 6(4) (substituted by SI 2001/767). Where an insolvent partnership is wound up as an unregistered company, certain provisions of the Company Directors Disqualification Act 1986 apply; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 (as amended): see para 1297 ante.

The Insolvency Act 1986 s 117 (as amended and modified) (High Court and county court jurisdiction: see para 1255 ante), applies for the purpose of the Company Directors Disqualification Act 1986 s 6(3) (as amended and modified) as if in a case within head (2) supra the references to the presentation of the petition for winding up in the Insolvency Act 1986 s 117 (as modified) (see para 1255 text to notes 6, 7 ante) were references to the making of the administration order: Company Directors Disqualification Act 1986 s 6(3A) (s 6(3A), (3B), (3C) added by the Insolvency Act 2000 s 8, Sch 4 paras 1, 5(1)); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 6(4A) (Sch 8 para 6(4A), (4B), (4C) added by SI 2001/767).

Nothing in these provisions invalidates any proceedings by reason of their being taken in the wrong court; and proceedings for or in connection with a disqualification order under the Company Directors Disqualification Act 1986 s 6 (as amended and modified) or in connection with a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 s 7 (as amended and modified: see the text to notes 7-13 infra) may be retained in the court in which proceedings were commenced, although it may not be in the court in which they ought to have been commenced: s 6(3B) (as so added); Insolvent Partnerships Order 1994, SI 1994/2421, art 16, Sch 8 para 6(4B) (as so added).

For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

2 For these purposes: (1) a partnership becomes insolvent if the court makes an order for it to be wound up as an unregistered company at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, or an administration order is made in relation to the partnership; and (2) a company becomes insolvent if the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, an administration order is made in relation to the company, or an administrative receiver of the company is appointed: Company Directors Disqualification Act 1986 s 6(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 6(2).

3 For these purposes, 'director' includes a shadow director: Company Directors Disqualification Act 1986 s 6(3C); Insolvent Partnerships Order 1994, SI 1994/2421, art 16, Sch 8 para 6(4C) (as added: see note 1 supra).

4 Company Directors Disqualification Act 1986 s 6(1) (as added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 6(1). As to determining such unfitness see para 1300 post.

5 Company Directors Disqualification Act 1986 s 6(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 6(3).

6 Company Directors Disqualification Act 1986 s 6(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 6(5).

7 Company Directors Disqualification Act 1986 s 7(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 7(1) (amended by SI 2001/767). As to the Secretary of State see para 11 note 10 ante. As to the official receiver see para 503 et seq ante.

8 Company Directors Disqualification Act 1986 s 7(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 7(2).

9 le the conditions mentioned in the Company Directors Disqualification Act 1986 s 6(1) (as modified): see the text to notes 1-4 supra.

10 As to disqualification undertakings see Company Directors Disqualification Act 1986 s 1A (as added); and para 1108 ante. As to the application of this provision to insolvent partnerships see para 1297 ante.

11 Company Directors Disqualification Act 1986 s 7(2A); (added by the Insolvency Act 2000 s 6(1), (3)); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 7(2A) (added by SI 2001/767).

12 Company Directors Disqualification Act 1986 s 7(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 7(3).

13 Company Directors Disqualification Act 1986 s 7; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 7(4), (5).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1298 Duty of court to disqualify unfit officers of insolvent partnerships; application to court; disqualification undertakings; reporting provisions

NOTE 1--SI 1994/2421 Sch 8 para 6(4) amended: SI 2005/1516.

NOTE 2--SI 1994/2421 Sch 8 para 6(2) amended: SI 2005/1516.

NOTE 12--SI 1994/2421 Sch 8 para 7(3) amended: SI 2005/1516.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(7) DISQUALIFICATION/1299. Disqualification after investigation.

1299. Disqualification after investigation.

If it appears to the Secretary of State from a report made by an inspector or person appointed to conduct an investigation¹ or from information or documents obtained from certain powers to require production of documents², or pursuant to an entry and search of premises on which such documents are believed to be³, or as a result of the investigative powers of the Director of the Serious Fraud Office⁴, or the Secretary of State's powers to assist overseas regulatory authorities⁵, that it is expedient in the public interest that a disqualification order should be made against any person who is or has been an officer⁶ of any insolvent partnership, he may apply to the court⁷ for such an order to be made against that person⁸.

The court may make a disqualification order against a person where, on such an application, it is satisfied that his conduct in relation to the partnership makes him unfit to be concerned in the management of a company⁹.

Where it appears to the Secretary of State from such report, information or documents that, in the case of a person who has offered to give him a disqualification undertaking, the conduct of the person in relation to an insolvent partnership of which the person is or has been an officer makes him unfit to be concerned in the management of a company and it is expedient in the public interest that he should accept the undertaking, instead of applying, or proceeding with an application, for a disqualification order, he may accept the undertaking¹⁰.

The maximum period of disqualification under these provisions is 15 years¹¹.

1 Ie under the Companies Act 1985 s 437 (as amended) (see COMPANIES vol 15 (2009) PARA 1554) or under the Financial Services and Markets Act 2000 s 167, s 168, s 169(1)(b) or s 284 or regulations made as a result of ibid s 262(2)(k): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 449; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 621, 683): Company Directors Disqualification Act 1986 s 8(1), (1A) (s 8(1) substituted, and s 8(1A) added, by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649 art 39) ; Insolvent Partnerships Order 1994, SI 1994/2421, art 16, Sch 8 s 8(1), (1A) (Sch 8 para 8(1) substituted, and Sch 8 para 8(1A), (1B) added, by SI 2001/3649). Where an insolvent partnership is wound up as an unregistered company, certain provisions of the Company Directors Disqualification Act 1986 apply; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 (as amended): see para 1297 ante. As to the Secretary of State see para 11 note 10 ante.

2 Ie under the Companies Act 1985 s 447 (as amended) (see COMPANIES vol 15 (2009) PARA 1558) or the Financial Services and Markets Act 2000 s 171 or s 173 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 449).

3 Ie under the Companies Act 1985 s 448 (as substituted): see COMPANIES vol 15 (2009) PARA 1559.

4 Ie under the Criminal Justice Act 1987 s 2 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1090) or the Criminal Justice (Scotland) Act 1987 s 52 (as amended). As to the Director of the Serious Fraud Office see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1067.

5 Ie under the Companies Act 1989 s 83 (as amended): see COMPANIES vol 15 (2009) PARA 1569.

6 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

7 For these purposes, 'the court' means the High Court: Company Directors Disqualification Act 1986 s 8(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 8(3).

8 Company Directors Disqualification Act 1986 s 8(1), (1A) (as substituted and added: see note 1 supra); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 8(1) (as substituted: see note 1 supra), Sch 8 para 8(1A), (1B) (as added: see note 1 supra).

9 Company Directors Disqualification Act 1986 s 8(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 8(2). As to determining such unfitness see para 1300 post.

10 Company Directors Disqualification Act 1986 s 8(2A) (s 8(2A) added by the Insolvency Act 2000 s 6(1), (4)); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 8(2A) (Sch 8 para 8(2A) added by SI 2001/767).

11 Company Directors Disqualification Act 1986 s 8(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 8(4).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1299 Disqualification after investigation

NOTES 2, 3--Also information or documents obtained under the 1985 Act s 437, 446E, 451A or 453A: 1986 Act s 8(1A) (as added) (amended by the Companies (Audit, Investigations and Community Enterprise) Act 2004 Sch 2 para 28; the Companies Act 2006 s 1039; SI 2009/1941).

NOTE 2--1985 Act s 447 substituted: Companies (Audit, Investigations and Community Enterprise) Act 2004 s 21.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(7) DISQUALIFICATION/1300. Matters for determining unfitness of officers of partnerships.

1300. Matters for determining unfitness of officers of partnerships.

Where it falls to a court¹ to determine whether a person's conduct as an officer² of a partnership, either taken alone or taken together with his conduct as an officer of any other partnership or partnerships or as a director³ of any company or companies, makes him unfit to be concerned in the management of a company, the court must, as respects that person's conduct as an officer of that partnership or each of those partnerships or as a director of that company or each of those companies, have regard in particular to the following matters⁴.

In all cases the court must have regard to:

- 1757 (1) any misfeasance or breach of any fiduciary or other duty by the officer in relation to the partnership or, as the case may be, by the director in relation to the company⁵;
 - 1758 (2) any misapplication or retention by the officer or the director of, or any conduct by the officer or the director giving rise to an obligation to account for, any money or other property of the partnership or, as the case may be, of the company⁶;
 - 1759 (3) the extent of the officer's or the director's responsibility for the partnership or, as the case may be, the company entering into any transaction liable to be set aside under the provisions against debt avoidance⁷;
 - 1760 (4) the extent of the director's responsibility for any failure by the company to comply with any of the provisions relating to:
- 19
- 5. (a) the company's duty to keep accounting records⁸;
 - 6. (b) where and for how long records are to be kept⁹;
 - 7. (c) the register of directors and secretaries¹⁰;
 - 8. (d) the obligation to keep and enter up the register of members¹¹;
 - 9. (e) the location of the register of members¹²;
 - 10. (f) the company's duty to make annual returns¹³;
 - 11. (g) the company's duty to register charges it creates¹⁴;
- 20
- 1761 (5) the extent of the director's responsibility for any failure by the directors of the company to comply with the provisions relating to the preparation of annual accounts¹⁵ or the approval and signature¹⁶ of the accounts;
 - 1762 (6) any failure by the officer to comply with any obligation imposed on him by or under any of the provisions of the Limited Partnerships Act 1907 relating to registration of particulars of a limited partnership¹⁷, registration of changes in particulars¹⁸ and advertising¹⁹ a general partner becoming a limited partner and the assignment of the share of a limited partner²⁰.

In addition, where the partnership or the company has become insolvent²¹, the court must also have regard to:

- 1763 (i) the extent of the officer's or the director's responsibility for the causes of the partnership or, as the case may be, the company becoming insolvent;

- 1764 (ii) the extent of the officer's or the director's responsibility for any failure by the partnership or, as the case may be, the company to supply any goods or services which have been paid for, in whole or in part;
- 1765 (iii) the extent of the officer's or the director's responsibility for the partnership or, as the case may be, the company entering into any transaction or giving any preference which is liable to be set aside²²;
- 1766 (iv) the extent of the director's responsibility for any failure by the directors of the company to comply with the provisions relating to the duty to call creditors' meetings in a creditors' voluntary winding up²³;
- 1767 (v) any failure by the director to comply with any obligation imposed on him by or under the provisions relating to:
- 21
12. (A) the statement of affairs where an administrative receiver has been appointed²⁴;
13. (B) the directors' duty to attend meetings and in respect of the statement of affairs in a creditors' voluntary winding up²⁵;
- 22
- 1768 (vi) any failure by the officer or the director to comply with any obligation imposed on him by or under the provisions²⁶ relating to:
- 23
14. (A) the company's statement of affairs where an administration order has been made²⁷;
15. (B) the statement of affairs in a winding up by the court²⁸;
16. (C) the duty of anyone with company property to deliver it up²⁹; and
17. (D) the duty³⁰ to co-operate with the office-holders³¹.
- 24

In determining whether he may accept a disqualification undertaking from any person the Secretary of State must, as respects the person's conduct as an officer of any partnership or a director of any company concerned, have regard in particular to the matters mentioned in heads (1) to (6) above, and, where the partnership or the company, as the case may be, has become insolvent, to the matters mentioned in heads (i) to (vi) above, and references in those heads to the officer and the partnership or, as the case may be, to the director and the company are to be read accordingly³².

1 For these purposes, the Company Directors Disqualification Act 1986 s 6(3) (as modified) (see para 1298 note 1 ante) applies as it applies for the purposes of ss 6, 7 (as amended and modified) (see para 1298 ante): s 9(2); Insolvent Partnerships Order 1994, SI 1994/2421, art 16, Sch 8 para 9(2). Where an insolvent partnership is wound up as an unregistered company, certain provisions of the Company Directors Disqualification Act 1986 apply; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 (as amended): see para 1297 ante.

2 For the meaning of 'officer', in relation to an insolvent partnership, see para 1197 note 8 ante.

3 For these purposes, 'director' includes a shadow director: Company Directors Disqualification Act 1986 s 9; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(2) (amended by SI 2001/767).

4 Company Directors Disqualification Act 1986 s 9(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(1) (amended by SI 2001/767). References in the Company Directors Disqualification Act 1986 Sch 1 (as amended and modified) to the officer and the partnership or, as the case may be, to the director and the company, are to be read accordingly: s 9; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(2) (as amended: see note 3 supra).

The Secretary of State may by order modify any of the provisions of the Company Directors Disqualification Act 1986 Sch 1 (as so modified and amended); and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient: s 9(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(5). The power to make such orders is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Company Directors

Disqualification Act 1986 s 9(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(6). Subject to such powers of modification, any reference in the Company Directors Disqualification Act 1986 Sch 1 (as amended and modified) to an enactment contained in the Companies Act 1985 or the Insolvency Act 1986 includes, in relation to any time before the coming into force of the enactment, the corresponding enactment in force at that time: Company Directors Disqualification Act 1986 s 9(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(4).

5 See para 688 et seq ante; and COMPANIES vol 14 (2009) PARA 544.

6 See COMPANIES vol 14 (2009) PARA 540 et seq.

7 Ie the Insolvency Act 1986 Pt XVI (ss 423-425) (as amended): see para 853 et seq ante.

8 Ie the Companies Act 1985 s 221 (as substituted). See also COMPANIES vol 15 (2009) PARA 708.

9 Ie ibid s 222 (as substituted). See also COMPANIES vol 15 (2009) PARA 709.

10 Ie ibid s 288 (as amended). See also COMPANIES vol 14 (2009) PARA 130.

11 Ie ibid s 352 (as amended). See also COMPANIES vol 14 (2009) PARA 335.

12 Ie ibid s 353. See also COMPANIES vol 14 (2009) PARA 347.

13 Ie ibid s 363 (as substituted and amended). See also COMPANIES vol 15 (2009) PARA 1421.

14 Ie ibid ss 399, 415. See also COMPANIES vol 15 (2009) PARA 1277.

15 Ie ibid s 226 (as substituted) or s 227 (as substituted). See also COMPANIES vol 15 (2009) PARAS 716, 775.

16 Ie ibid s 233 (as substituted). See also COMPANIES vol 15 (2009) PARA 861.

17 Ie the Limited Partnerships Act 1907 s 8: see PARTNERSHIP vol 79 (2008) PARA 222.

18 Ie ibid s 9: see PARTNERSHIP vol 79 (2008) PARA 223.

19 Ie ibid s 10: see PARTNERSHIP vol 79 (2008) PARA 224.

20 Company Directors Disqualification Act 1986 Sch 1 Pt I; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt I, Sch 8.

21 For these purposes, the Company Directors Disqualification Act 1986 s 6(2) (as modified) (see para 1298 note 2 ante) applies as it applies for the purposes of ss 6, 7 (as amended and modified) (see para 1298 ante): s 9(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(3).

22 Ie being a transaction or preference liable to be set aside under the Insolvency Act 1986 s 127 (see para 700 ante) or ss 238-240 (as amended) (see para 843 et seq ante).

23 Ie ibid s 98: see para 945 ante.

24 Ie ibid s 47: see para 403 ante.

25 Ie ibid s 99: see para 947 post.

26 Ie both as they apply in relation to companies and as they apply in relation to insolvent partnerships by virtue of the provisions of the Insolvent Partnerships Order 1994, SI 1994/2421 (as amended).

27 Ie the Insolvency Act 1986 s 22: see para 169 ante.

28 Ie ibid s 131: see para 519 et seq ante.

29 Ie ibid s 234 (as amended): see para 675 ante.

30 Ie under ibid s 235 (as amended): see para 678 ante.

31 Company Directors Disqualification Act 1986 s 9(1)(b), Sch 1 Pt II; Insolvent Partnerships Order 1994, SI 1994/2421, Sch 1 Pt II, Sch 8.

32 Company Directors Disqualification Act 1986 s 9(1A) (added by the Insolvency Act 2000 s 6(1), (6)); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 9(1A) (added by SI 2001/767). As to the Secretary of State see para 11 note 10 ante.

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1300 Matters for determining unfitness of officers of partnerships

NOTE 4--Company Directors Disqualification Act 1986 s 9(3) omitted: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/15. INSOLVENT PARTNERSHIPS/(7) DISQUALIFICATION/1301. Criminal penalties; offences by body corporate; personal liability; applications for leave.

1301. Criminal penalties; offences by body corporate; personal liability; applications for leave.

If a person acts in contravention of a disqualification order or disqualification undertaking he is liable, on conviction on indictment, to imprisonment for not more than two years or a fine or both, and, on summary conviction, to imprisonment for not more than six months or a fine not exceeding the statutory maximum or both¹.

Where a body corporate is guilty of an offence of acting in contravention of a disqualification order or disqualification undertaking and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly².

A person is personally responsible for all the relevant debts³ of a company if at any time: (1) in contravention of a disqualification order or disqualification undertaking he is involved in the management of the company⁴; or (2) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order or disqualification undertaking or to be an undischarged bankrupt⁵. Where a person is so personally responsible, he is jointly and severally liable with the company and any other person who is so liable⁶.

Where a person is subject to a disqualification order made by a court having jurisdiction to wind up partnerships, any application for leave must be made to that court⁷. Where a person is subject to a disqualification undertaking accepted at any time⁸, any such application for leave must be made to any court to which, if the Secretary of State had applied for a disqualification order at that time, his application could have been made⁹; but where a person is subject to two or more disqualification orders or undertakings, or to one or more disqualification orders and to one or more disqualification undertakings, any such application for leave must be made to any court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made¹⁰. On the hearing of such an application for leave, the Secretary of State must appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses¹¹.

1 Company Directors Disqualification Act 1986 s 13; Insolvent Partnerships Order 1994, SI 1994/2421, art 16, Sch 8 para 13 (Sch 8 paras 13-15, 17 added by SI 2001/767). Where an insolvent partnership is wound up as an unregistered company, certain provisions of the Company Directors Disqualification Act 1986 apply; certain of those provisions are modified and are set out as modified in the Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 (as amended): see para 1297 ante. As to the statutory maximum see para 10 note 1 ante.

2 Company Directors Disqualification Act 1986 s 14(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 14(1) (as added: see note 1 supra). Where the affairs of a body corporate are managed by its members, the Company Directors Disqualification Act 1986 s 14(1) (as modified) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 14(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 14(2) (as so added).

3 'Relevant debts' of a company are, in relation to a person who is personally responsible under head (1) in the text, such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and, in relation to a person who is personally responsible under

head (2) in the text, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions: Company Directors Disqualification Act 1986 s 15(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 15(3) (as added: see note 1 supra).

4 A person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company: Company Directors Disqualification Act 1986 s 15(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 15(4) (as added: see note 1 supra).

5 Company Directors Disqualification Act 1986 s 15(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 15(1) (as added: see note 1 supra). A person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order or disqualification undertaking or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person: Company Directors Disqualification Act 1986 s 15(5); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 15(5) (as added: see note 1 supra).

6 Company Directors Disqualification Act 1986 s 15(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 15(2) (as added: see note 1 supra).

7 Company Directors Disqualification Act 1986 s 17(1); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 17(1) (as added: see note 1 supra). Where a disqualification order is made against a person, he must not be a director of a company or act as a receiver of a company's property unless he has leave of the court: see para 1107 et seq ante.

8 le under the Company Directors Disqualification Act 1986 ss 7, 8 (as amended): see paras 1298-1299 ante.

9 Company Directors Disqualification Act 1986 s 17(2); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 17(2) (as added: see note 1 supra). As to the Secretary of State see para 11 note 10 ante.

10 Company Directors Disqualification Act 1986 s 17(3); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 17(3) (as added: see note 1 supra).

11 Company Directors Disqualification Act 1986 s 17(4); Insolvent Partnerships Order 1994, SI 1994/2421, Sch 8 para 15(2) (as added: see note 1 supra).

UPDATE

1166-1301 Insolvent Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1301 Criminal penalties; offences by body corporate; personal liability; applications for leave

TEXT AND NOTES 3-5--Company Directors Disqualification Act 1986 s 15(1) amended: SI 2009/1941.

NOTE 5--Company Directors Disqualification Act 1986 s 15(5) substituted: SI 2009/1941.

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16. LIMITED LIABILITY PARTNERSHIPS

(1) IN GENERAL

1302. Insolvency procedures; application of statutory provisions.

Regulations made under the Insolvency Act 1986 make provision about the insolvency and winding up of limited liability partnerships¹, by applying or incorporating, with such modifications as appear appropriate, Parts I to IV, VI and VII of that Act².

Further provision about the insolvency and winding up of limited liability partnerships, and about the insolvency and winding up of overseas limited liability partnerships³, may be made by:

- 1769 (1) applying or incorporating, with such modifications as appear appropriate, any law relating to the insolvency or winding up of companies or other corporations which would not otherwise have effect in relation to them⁴; or
- 1770 (2) providing for any law relating to the insolvency or winding up of companies or other corporations which would otherwise have effect in relation to them not to apply to them or to apply with such modifications as appear appropriate⁵.

The Limited Liability Partnerships Regulations 2001⁶ came into force on 6 April 2001⁷.

Limited liability partnerships may be the subject of: (a) a voluntary arrangement under Part I of the Insolvency Act 1986⁸ as modified; (b) an administration order under Part II of that Act⁹ as modified; (c) receivership under Part III of that Act¹⁰ as modified; (d) winding up under Part IV of that Act (in the case of registered companies)¹¹ or Part V of that Act (in the case of unregistered companies)¹² as modified.

Certain other provisions of the Insolvency Act 1986¹³, and certain provisions of the Company Directors Disqualification Act 1986¹⁴ apply, with modifications, to limited liability partnerships.

1 For the meaning of 'limited liability partnership' for these purposes see the Limited Liability Partnerships Act 2000 s 1(2); and PARTNERSHIP vol 79 (2008) PARA 234. See also para 71 note 3 ante. As to insolvent partnerships generally see para 1166 et seq ante.

2 As to the power to make regulations see *ibid* s 14(1). As to the regulations see the text and note 6 infra.

3 For these purposes, 'overseas limited liability partnership' means a body incorporated or otherwise established outside Great Britain and having such connection with Great Britain, and such other features, as regulations may prescribe: *ibid* s 14(3).

4 *Ibid* s 14(2)(a).

5 *Ibid* s 14(2)(b).

6 *Ie* the Limited Liability Partnerships Regulations 2001, SI 2001/1090.

7 *Ibid* reg 1.

8 *Ie* the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante. See also para 1305 post.

- 9 le ibid Pt II (s 8) (as amended): see paras 146 et seq ante. See also para 1306 post.
- 10 le ibid Pt III (ss 28-72H) (as amended): see para 380 et seq ante; and COMPANIES vol 15 (2009) PARA 1336 et seq. See also para 1307 post.
- 11 le ibid Pt IV (ss 73-219) (as amended): see para 432 et seq ante. See also para 1308 post.
- 12 le ibid Pt V (ss 220-229) (as amended): see para 1148 et seq ante. See also para 1308 post.
- 13 Ibid Pts VI, VII (ss 230-251) and Pts XII-XIX (ss 386-444) apply, as modified, to limited liability partnerships: see para 1309 post.
- 14 See para 1310 post.

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1302 Insolvency procedures; application of statutory provisions

NOTE 6--The provisions of SI 2001/1090 applying provisions of the Insolvency Act 1986 have effect only in relation to limited liability partnerships registered in Great Britain: see SI 2001/1090 reg 2A(1) (reg 2A added by SI 2009/1804). The other provisions of SI 2001/1090 have effect in relation to limited liability partnerships registered in any part of the United Kingdom: SI 2001/1090 reg 2A(2).

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(1) IN GENERAL/1303. Interpretation; expressions appropriate to companies.

1303. Interpretation; expressions appropriate to companies.

The following provisions apply for the interpretation in relation to limited liability partnerships¹ of expressions appropriate to companies² in provisions of the Insolvency Act 1986 applied by the Limited Liability Partnerships Order 2001³, except where the context otherwise requires⁴:

- 1771 (1) references to a company include references to a limited liability partnership⁵;
- 1772 (2) references to a director⁶ or to an officer of a company include references to a member⁷ of a limited liability partnership⁸;
- 1773 (3) references to a shadow director⁹ include references to a shadow member¹⁰;
- 1774 (4) references to the Companies Act 1985, the Company Directors Disqualification Act 1986, the Companies Act 1989 or to any provisions of those Acts include references to those Acts or to those provisions as they apply to limited partnerships by virtue of the Limited Liability Partnerships Act 2000¹¹;
- 1775 (5) references to the memorandum of association of a company and the articles of association of a company include references to the limited liability partnership agreement¹² of a limited liability partnership¹³.

The following provisions apply for the interpretation in relation to limited liability partnerships of expressions appropriate to companies in provisions of the Company Directors Disqualification Act 1986 applied by the Limited Liability Partnerships Order 2001, except where the context otherwise requires¹⁴:

- 1776 (a) references to a company include references to a limited liability partnership¹⁵;
- 1777 (b) references to the Companies Act 1985 or the Companies Act 1989 include references to the Limited Liability Partnerships Act 2000 and regulations made thereunder; and references to the companies legislation include references to the Limited Liability Partnerships Act 2000, regulations made thereunder and to any enactment applied by regulations to limited liability¹⁶;
- 1778 (c) references to the Insolvency Act 1986 include references to that Act as it applies to limited liability partnerships by virtue of the Limited Liability Partnerships Order 2001¹⁷;
- 1779 (d) references to the memorandum of association of a company include references to the incorporation document of a limited liability partnership¹⁸;
- 1780 (e) references to a shadow director include references to a shadow member¹⁹;
- 1781 (f) references to a director of a company or to an officer of a company include references to a member of a limited liability partnership²⁰.

1 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

2 For the meaning of 'company' for these purposes see the Companies Act 1985 s 735 (applied by the Insolvency Act 1986 s 251); and COMPANIES vol 14 (2009) para 1.

3 ie the Limited Liability Partnerships Regulations 2001, SI 2001/1090.

- 4 Ibid regs 2, 5(2).
- 5 Ibid reg 5(2)(a).
- 6 For the meaning of 'director' see para 5 note 2 ante.
- 7 For the meaning of 'member of a limited liability partnership' see the Limited Liability Partnerships Act 2000 s 4; and PARTNERSHIP vol 79 (2008) PARA 239.
- 8 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(2)(b).
- 9 For the meaning of 'shadow director' see para 5 note 3 ante.
- 10 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(2)(c). 'Shadow member' in relation to limited liability partnerships means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act (but so that a person is not deemed a shadow member by reason only that the members of the limited partnership act on advice given by him in a professional capacity): reg 2.
- 11 Ibid reg 5(2)(d).
- 12 'Limited liability partnership agreement', in relation to a limited liability partnership, means any agreement express or implied between the members of the limited liability partnership or between the limited liability partnership and the members of the limited liability partnership which determines the mutual rights and duties of the members, and their rights and duties in relation to the limited liability partnership: ibid reg 2.
- 13 Ibid reg 5(2)(e).
- 14 Ibid reg 4(2).
- 15 Ibid reg 4(2)(a).
- 16 Ibid reg 4(2)(b).
- 17 Ibid reg 4(2)(d).
- 18 Ibid reg 4(2)(e).
- 19 Ibid reg(4)(2)(f).
- 20 Ibid reg 4(2)(g).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1303 Interpretation; expressions appropriate to companies

TEXT AND NOTES 11, 13, 18--SI 2001/1090 reg 4(2)(e) revoked, reg 5(2)(d), (e) amended: SI 2009/1941.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(1) IN GENERAL/1304. Application of subordinate legislation and practice direction.

1304. Application of subordinate legislation and practice direction.

Specified subordinate legislation¹ applies as from time to time in force to limited liability partnerships² and with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act 1986 and of the Company Directors Disqualification Act 1986 which are applied by the Limited Liability Partnerships Regulations 2001³.

In the case of any conflict between any provision of the subordinate legislation so applied and any provision of the Limited Liability Partnership Regulations 2001, the latter provision prevails⁴.

For the purposes of the practice direction on insolvency proceedings, 'insolvency proceedings' includes proceedings under the Limited Liability Partnership Regulations 2001⁵.

1 The subordinate legislation specified is: the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986, SI 1986/952; the Insolvency Practitioners (Recognised Professional Bodies) Order 1986, SI 1986/1764; the Insolvency Rules 1986, SI 1986/1925 (as amended); the Insolvency Proceedings (Monetary Limits) Order 1986, SI 1986/1996 (as amended); the Insolvency Proceedings (Fees) Order 2004, SI 2004/593 (although the Insolvency Fees Order 1986, SI 1986/2030, still applies where a winding-up order was made under the Insolvency Act 1986 before 1 April 2004); the Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986, SI 1986/2123; the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, SI 1987/2023 (as amended); the Insolvency Practitioners Regulations 1990, SI 1990/439 (as amended); the Insolvency Regulations 1994, SI 1994/2507 (as amended); the Contracting Out (Functions of the Official Receiver) Order 1995, SI 1995/1386; the Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1996, SI 1996/253; the Insolvent Companies (Reports on Conduct of Directors) Rules 1996, SI 1996/1909 (as amended); the Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1998, SI 1998/2766; the Insolvency (Amendment) Regulations 2000, SI 2000/485; and the Companies (Disqualification Orders) Regulations 2001, SI 2001/967 (as amended); Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 10(1), Sch 6; Interpretation Act 1978 s 17(2)(a).

2 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

3 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 10(1).

4 Ibid reg 10(2).

5 *Practice Direction--Insolvency Proceedings* para 1.1(1), (5). For these purposes, 'the Act' means the Insolvency Act 1986 and includes the Act as applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001; 'company' includes a limited liability partnership; and references to a 'contributory' include references to a member of a limited liability partnership: *Practice Direction--Insolvency Proceedings* para 1.1(1), (6). For the meaning of 'member of a limited liability partnership' see the Limited Liability Partnerships Act 2000 s 4; and PARTNERSHIP vol 79 (2008) PARA 239.

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1304 Application of subordinate legislation and practice direction

NOTE 1--SI 2004/593 amended: SI 2005/544, SI 2006/561, SI 2007/521, SI 2008/714, SI 2009/645.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(2) VOLUNTARY ARRANGEMENTS/1305. Voluntary arrangements of limited liability partnerships.

(2) VOLUNTARY ARRANGEMENTS

1305. Voluntary arrangements of limited liability partnerships.

The provisions of the Insolvency Act 1986 relating to company voluntary arrangements¹ apply in relation to a limited liability partnership², those provisions being modified, except where the context otherwise requires, in their application to such a partnership³.

1 le the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see para 71 et seq ante.

2 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

3 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(1), (2). The modifications are contained in reg 5(1), (2), Sch 3, and include:

105 (1) the modifications referred to in para 1303 heads (1)-(5) ante;

106 (2) modifications to the Insolvency Act 1986 s 1(1), (3) (as amended) (see paras 71, 72 ante), s 2(2)-(4) (as amended) (see paras 109, 110, 114 ante), s 3(1), (2) (see paras 115, 117 ante), s 4(1), (5), (6) (see paras 119, 123, 129 ante), s 5(1), (4) (as amended) (see para 131 ante), s 6(1)-(5) (as amended) (see paras 135-137 ante) and s 7(1) (as amended) (see para 132 ante);

107 (3) the addition of s 4(5A) (see para 123 ante); and

108 (4) such further modification as the context requires for the purpose of giving effect to the legislation as applied by the Limited Liability Partnerships Regulations 2001, SI 2001/1090 (as amended).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1305-1309 Voluntary arrangements of limited liability partnerships ... Other provisions applied to limited liability partnerships

SI 2001/1090 Sch 3 amended: SI 2005/1989.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(3) ADMINISTRATION ORDERS/1306. Administration orders in relation to limited liability partnerships.

(3) ADMINISTRATION ORDERS

1306. Administration orders in relation to limited liability partnerships.

The provisions of the Insolvency Act 1986 relating to administration orders apply, as they had effect prior to the amendments and repeals made by the Enterprise Act 2002¹, in relation to a limited liability partnership², those provisions being modified, except where the context otherwise requires, in their application to such a partnership³.

1 The Insolvency Act 1986 Pt II (ss 8-27) (as amended): see para 146 et seq ante. The amendments and repeals made by the Enterprise Act 2002 to the provisions of the Insolvency Act 1986 relating to administration orders do not apply to administration orders in relation to limited liability partnerships, and the law in force without such amendments and repeals continues to apply in so far as it is necessary to give effect to the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5: Enterprise Act 2002 (Commencement No 4 and Transitional Provisions and Savings) Order 2003, SI 2003/2093, art 3. See also para 145 ante.

2 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

3 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(1), (2). The modifications are contained in reg 5(1), (2), Sch 3, and include:

109 (1) the modifications referred to in para 1303 heads (1)-(5) ante;

110 (2) modifications to the Insolvency Act 1986 s 8(1A) (as added), (4) (see para 147 ante), s 9(1) (see para 148 ante), s 10(1) (see para 149 ante), s 11(3) (see para 157 ante), s 13(3) (see para 188 ante) and s 14(2) (see para 163 ante); and

111 (3) such further modification as the context requires for the purpose of giving effect to the legislation as applied by the Limited Liability Partnerships Regulations 2001, SI 2001/1090 (as amended).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1305-1309 Voluntary arrangements of limited liability partnerships ... Other provisions applied to limited liability partnerships

SI 2001/1090 Sch 3 amended: SI 2005/1989.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(4) RECEIVERSHIP/1307. Receivership in relation to limited liability partnerships.

(4) RECEIVERSHIP

1307. Receivership in relation to limited liability partnerships.

The provisions of the Insolvency Act 1986 relating to receivership¹ apply in relation to a limited liability partnership², those provisions being modified, except where the context otherwise requires, in their application to such a partnership³.

1 Ie the Insolvency Act 1986 Pt III (ss 28-72H) (as amended): see para 380 et seq ante.

2 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

3 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(1), (2). The modifications are contained in reg 5(1), (2), Sch 3, and include:

112 (1) the modifications referred to in para 1303 heads (1)-(5) ante; and

113 (2) such further modification as the context requires for the purpose of giving effect to the legislation as applied by the Limited Liability Partnerships Regulations 2001, SI 2001/1090 (as amended).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1305-1309 Voluntary arrangements of limited liability partnerships ... Other provisions applied to limited liability partnerships

SI 2001/1090 Sch 3 amended: SI 2005/1989.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(5) WINDING UP/1308. Winding up of limited liability partnerships.

(5) WINDING UP

1308. Winding up of limited liability partnerships.

The provisions of the Insolvency Act 1986 relating to the winding up of registered and unregistered companies¹ apply in relation to a limited liability partnership², those provisions being modified, except where the context otherwise requires, in their application to such a partnership³.

¹ The Insolvency Act 1986 Pt IV (ss 73-219) (as amended) (registered companies) (see para 432 et seq ante) and Pt V (ss 220-229) (as amended) (unregistered companies) (see para 1147 et seq ante).

² For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

³ Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(1), (2). The modifications are contained in reg 5(1), (2), Sch 3, and include:

114 (1) the modifications referred to in para 1303 heads (1)-(5) ante;

115 (2) modifications to the Insolvency Act 1986 s 73(1) (see para 433 ante), s 74 (see para 704 ante), s 75 (see para 717 ante), s 76 (see para 713 ante), s 78 (see para 706 ante), s 79(1)-(3) (see para 703 ante), s 83 (see para 714 ante), s 84(1)-(4) (see paras 710, 711 ante), s 85(1) (see para 944 ante), s 86 (see para 996 ante), s 87(2) (see para 997 ante), s 88 (see para 998 ante), s 89(2), (3), (5) (see para 941 ante), s 90 (see para 940 ante), s 91(1), (2) (see paras 951, 997 ante), s 92(1)-(4) (see para 980 ante), s 93(1), (4) (see para 970 ante), s 94(1), (6) (see paras 1020, 1022 ante), s 95(1), (7) (see para 942 ante), s 96(a), (b) (see para 942 ante), s 98(1), (5) (see para 945 ante), s 99(1), (2), (3) (see para 947 ante), s 100(1), (3) (see para 953 ante), s 101(2) (see para 994 ante), s 105(1) (see para 970 ante), s 106(1), (6) (see paras 1020, 1022 ante), s 110 (as amended), s 111 (see COMPANIES vol 15 (2009) PARAS 1438, 1446, 1448), s 117(2), (3) (see para 438 ante), s 120(3), (5), s 122(1) (as amended) (see para 444 ante), s 124(2), (3), (4)(a) (as amended) (see paras 444, 454 ante), s 124A(1) (see para 444 ante), s 126(2) (see COMPANIES vol 14 (2009) PARA 48), s 127 (as amended) (see para 700 ante), s 129(1) (see para 489 ante), s 130(3) (see para 893 ante), s 148(1) (see para 574 ante), s 149(1), (2), (3) (see para 741 ante), s 160(1), (2) (see para 588 ante), s 165(2), (4) (see para 959 ante), s 166(5) (see para 961 ante), s 171(2), (6) (see paras 985, 991 ante), s 173(2) (see para 992 ante), s 183(2) (as amended) (see para 882 ante), s 184(1), (4) (as amended) (see paras 884, 885 ante), s 187 (see para 830 ante), s 194 (see para 665 ante), s 195(3) (see para 480 ante), s 206(1) (as amended) (see para 905 ante), s 207(1) (see para 908 ante), s 210(2) (see para 909 ante), s 214(2) (see para 914 ante), s 215(1), (2), (4), (5) (see para 914 ante), and s 218(1), (3), (4), (6) (as amended) (see paras 924, 925, 1015, 1017 ante);

116 (3) the addition of s 94(5A) (application of s 92(3), (4) for the purposes of s 94), s 105(5) (application of s 92(3), (4) for the purposes of s 105), s 106(5A) (application of s 92(3), (4) for the purposes of s 106), s 165(4A) (application of s 92(3), (4) for the purposes of s 165), s 171(7) (application of s 92(3), (4) for the purposes of s 171), and s 214A (adjustment of withdrawals); and

117 (4) such further modification as the context requires for the purpose of giving effect to the legislation as applied by the Limited Liability Partnerships Regulations 2001, SI 2001/1090 (as amended).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1305-1309 Voluntary arrangements of limited liability partnerships ... Other provisions applied to limited liability partnerships

SI 2001/1090 Sch 3 amended: SI 2005/1989.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(6) MISCELLANEOUS/1309. Other provisions applied to limited liability partnerships.

(6) MISCELLANEOUS

1309. Other provisions applied to limited liability partnerships.

Many miscellaneous provisions of the Insolvency Act 1986 apply in relation to a limited liability partnership¹, those provisions being modified, except where the context otherwise requires, in their application to such a partnership². Those provisions include provisions relating to office-holders, management by office-holders and adjustment of prior transactions³; interpretation⁴; preferential debts⁵; insolvency practitioners and their qualification⁶; public administration⁷; subordinate legislation⁸; debt avoidance⁹; and various miscellaneous and general provisions¹⁰.

1 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

2 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 5(1), (2). The modifications are contained in reg 5(1), (2), Sch 3, and include:

118 (1) the modifications referred to in para 1303 heads (1)-(5) ante;

119 (2) modifications to the Insolvency Act 1986 s 233(1), (4) (as amended) (see para 317 ante), s 247(2) (see para 9 ante), s 249 (see para 5 ante), s 250 (see para 72 ante), s 251 (see para 76 ante), s 386(1), (2) (as amended) (see paras 763, 765 ante), s 387(3), (5), (6) (as amended) (see para 768 ante), s 388(2), (3), (4) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; and para 8 ante), s 389(1) (see para 10 ante), s 402 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 845), s 412 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 28, 753), s 415 (see para BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 39, 816), s 416(1), (3) (see para 446 ante), s 418 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 22), s 420 (as amended) (see para 1166 ante), s 421 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 823-824), s 422 (as amended) (see para 552 ante), s 427 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 697), s 429 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 910), s 432(2) (see para 928 ante), s 435(11) (see para 5 ante), s 436 (as amended) (see para 31 ante), s 437 (see COMPANIES vol 15 (2009) PARA 1554), s 442 (see para 1156 ante), Sch 1 para 19 (see para 163 ante), and Sch 10 (in relation to s 85(2) (see para 944 ante), s 89(4) (see para 941 ante), s 93(3) (see para 970 ante), s 99(3) (see para 947 ante), s 105(3) (see para 970 ante), s 106(6) (see para 1022 ante), ss 353(1)-362 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 709-723) and s 429(5) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 910));

120 (3) the addition of s 435(3A) (member of a limited liability partnership is an associate of that partnership); and

121 (4) such further modification as the context requires for the purpose of giving effect to the legislation as applied by the Limited Liability Partnerships Regulations 2001, SI 2001/1090.

3 le the Insolvency Act 1986 Pt VI (ss 230-246) (as amended): see para 2 notes 7-17 ante.

4 le ibid Pt VII (ss 247-251) (as amended): see paras 9, 72, 75, 109 ante.

5 le ibid Pt XII (ss 386-387) (as amended): see para 763 ante.

6 le ibid Pt XIII (ss 388-398) (as amended): see para 8 et seq ante.

7 le ibid Pt XIV (ss 399-410) (as amended): see para 503 et seq ante.

8 *le ibid* Pt XV (ss 411-422) (as amended): see para 1041 et seq ante.

9 *le ibid* Pt XVI (ss 423-425) (as amended): see para 853 et seq ante.

10 *le ibid* Pt XVII (ss 426-434) (as amended); Pt XVIII (ss 435-436A) (as amended); and Pt XIX (ss 437-444) (as amended).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1305-1309 Voluntary arrangements of limited liability partnerships ... Other provisions applied to limited liability partnerships

SI 2001/1090 Sch 3 amended: SI 2005/1989.

Halsbury's Laws of England/COMPANY AND PARTNERSHIP INSOLVENCY (VOLUME 7(3) (2004 REISSUE) PARAS 1-628; VOLUME 7(4) (2004 REISSUE) PARAS 629-1310)/16. LIMITED LIABILITY PARTNERSHIPS/(7) DISQUALIFICATION/1310. Application of the Company Directors Disqualification Act 1986.

(7) DISQUALIFICATION

1310. Application of the Company Directors Disqualification Act 1986.

The provisions of the Company Directors Disqualification Act 1986¹ apply in relation to a limited liability partnership², those provisions being modified, except where the context otherwise requires, in their application to such a partnership³.

1 As to the disqualification of company directors see COMPANIES vol 15 (2009) PARA 1575 et seq.

2 For the meaning of 'limited liability partnership' see para 1302 note 1 ante. As to insolvent partnerships generally see para 1166 et seq ante.

3 Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 4(2). The modifications are contained in reg 4(2), Sch 2 Pt II, and include:

- 122 (1) the modifications referred to in para 1303 heads (a)-(f) ante;
- 123 (2) the addition of the Company Directors Disqualification Act 1986 Sch 1 Pt II para 8A (court declaration of member's liability to contribute to partnership assets); and
- 124 (3) such further modification as the context requires for the purpose of giving effect to the legislation as applied by the Limited Liability Partnerships Regulations 2001, SI 2001/1090 (as amended).

UPDATE

1302-1310 Limited Liability Partnerships

The terminology used in the Insolvency Rules 1986, SI 1986/1925, has been extensively updated by the amendments made by SI 2010/686. A non-exhaustive list of the terminological alterations is set out in PARA 2 NOTE 5.

1310 Application of the Company Directors Disqualification Act 1986

NOTE 3--The provisions of SI 2001/1090 have effect only in relation to limited liability partnerships registered in Great Britain: see SI 2001/1090 reg 2A(1) (reg 2A added by SI 2009/1804). The other provisions of SI 2001/1090 have effect in relation to limited liability partnerships registered in any part of the United Kingdom: SI 2001/1090 reg 2A(2).